

**OFFICIAL CODE  
OF  
GEORGIA**  

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**ANNOTATED**



**VOLUME 17**

Title 20. Education

2012 Edition



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# OFFICIAL CODE OF GEORGIA ANNOTATED

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With Provision for Subsequent Pocket Parts

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*Prepared by*

The Code Revision Commission  
The Office of Legislative Counsel  
*and*

The Editorial Staff of LexisNexis®



Published Under Authority of the State of Georgia

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## **Volume 17** **2012 Edition**

Title 20. Education

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Including Acts of the 2012 Session of the General Assembly of Georgia  
and Annotations taken from the Georgia Reports  
and the Georgia Appeals Reports

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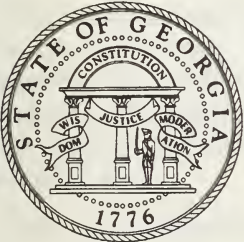


**OFFICE OF SECRETARY OF STATE**

**I, Brian P. Kemp, Secretary of State of the  
State of Georgia, do hereby certify that**

the statutory portion of the Official Code of Georgia Annotated contained  
in this volume is a true and correct copy of such material as enacted by  
the General Assembly of Georgia; all as same appear of file and record in  
this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed  
the seal of my office, at the Capitol, in the City of Atlanta,  
this 26th day of June, in the year of our Lord Two Thousand  
and Twelve and of the Independence of the United  
States of America the Two Hundred and Thirty-Sixth.



*B. P. Kemp*

**Brian P. Kemp, Secretary of State**





## Preface

This volume cumulates and replaces the 2009 edition of Volume 17 of the Official Code of Georgia Annotated, as supplemented by the 2011 Cumulative Supplement. The 2009 Volume 17 and its 2011 Supplement may be recycled or, if so desired, retained for historical purposes. This volume contains all laws specifically codified in Title 20 by the General Assembly through the 2012 Session. This volume also contains case annotations reflecting decisions posted to LexisNexis® through March 30, 2012. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter. As official and traditional citations become available, substitutions for the LexisNexis® citations will be made.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; Mercer Law Review; Georgia State Bar Journal; American Law Reports; American Jurisprudence 2d; American Jurisprudence Pleading and Practice Forms; American Jurisprudence Proof of Facts; American Jurisprudence Trials; Corpus Juris Secundum; and Uniform Laws Annotated. Also included, where appropriate, are cross references to the Official Code of Georgia Annotated.

This volume retains amendment notes and effective date notes for Acts passed during the 2010, 2011, and 2012 Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2010 Session of the General Assembly, the user should consult the Georgia Laws.

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## **User's Guide**

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.





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# **TITLE 20**

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**Law reviews.** — For article, “Rights Amendments Act on Schools and Universities,” see 25 Ga. St. U. L. Rev. 641 (2009).  
Resurgence: The Impact of the ADA

JUDICIAL DECISIONS

**Title repealed prior conflicting legislation.** — Former Code of School Laws, Ga. L. 1919, pp. 288-363, repealed all prior legislation concerning or affecting the common schools of Georgia which was in conflict with it. David v. Board of Educ., 179 Ga. 498, 176 S.E. 481 (1934).

OPINIONS OF THE ATTORNEY GENERAL

**Education board not authorized to lend money to other board or agency.** — There are many general and special provisions found in this title with regard to the powers and authority of the State Board of Education; there is no provision which authorizes the board to lend money to any other board or agency. It would be presumed that the General Assembly, under the present law, did not intend for the board to have such authority. 1957 Op. Att’y Gen. p. 122.

CHAPTER 1

GENERAL PROVISIONS

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ARTICLE 1

GENERAL PROVISIONS

**Editor's notes.** — The existing provisions of Chapter 1 were designated as Article 1 by Ga. L. 1990, p. 2037, § 1.

**Administrative rules and regulations.** — Rules of general applicability,

Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Chapter 160-1-3.

20-1-1. Acceptance and adoption of annuity contracts of teachers hired from other Georgia school systems.

The several county and independent school system boards of education and school superintendents are authorized and directed to accept and adopt previously obtained annuity contracts of school teachers hired from other Georgia school systems and to withhold salary

deductions in accordance with such contracts, if such boards of education or school superintendents had notice or knowledge of the annuity contracts before hiring any of such teachers. (Ga. L. 1970, p. 458, § 1; Ga. L. 1987, p. 3, § 20; Ga. L. 2001, p. 4, § 20.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1614.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 486.

### **20-1-2. Power of the governing boards of public school systems to establish supplemental pension and retirement allowances.**

The governing boards of public school systems of this state are authorized to establish pension and retirement allowances out of local funds to supplement the allowances provided for teachers under the Teachers Retirement System of Georgia. (Ga. L. 1949, p. 1183, § 1.)

**Cross references.** — Health insurance plans for retired former employees of public school systems, Ga. Const. 1983, Art. III, Sec. VI, Para. VI. Application of other

state-funded pension or retirement benefits to members and beneficiaries of Teachers Retirement System of Georgia, § 47-3-140.

#### RESEARCH REFERENCES

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 486.

Act of 1974 (29 USCA § 1001 et seq.) by United States Supreme Court, 150 ALR

**ALR.** — Construction and application of Employee Retirement Income Security

Fed. 441.

### **20-1-3. Eligibility of teachers receiving retirement benefits from the Board of Regents of the University System of Georgia to be members of the Teachers Retirement System of Georgia.**

Teachers in the University System of Georgia who upon retirement receive retirement pay or allowances from or through the Board of Regents of the University System of Georgia shall not be disqualified thereby from becoming members of the Teachers Retirement System of Georgia. As used in this Code section, "teacher" means the same as it is defined in Code Section 47-3-1. (Ga. L. 1945, p. 454, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1614, 1620.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 481 et seq.



**20-1-4. Power of the Board of Regents of the University System of Georgia to establish supplemental pension and retirement allowances.**

The Board of Regents of the University System of Georgia is authorized to establish pension and retirement allowances to supplement the allowances provided for teachers under the Teachers Retirement System of Georgia. (Code 1933, § 32-152, enacted by Ga. L. 1949, p. 1196, § 1.)

**Cross references.** — Application of Teachers Retirement System of Georgia, other state-funded pension or retirement § 47-3-140. benefits to members and beneficiaries of

**OPINIONS OF THE ATTORNEY GENERAL**

**Supplemental retirement plan at Medical College of Georgia.** — It is within the authority of the board of regents to establish a supplemental retirement plan at the Medical College of Georgia. 1999 Op. Att’y Gen. No. U99-10.

**RESEARCH REFERENCES**

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 486.

**20-1-5. Liability of surrogate parents.**

Any individual appointed to act as a surrogate parent for a child pursuant to federal law (P.L. 94-142) and federal regulations (34 C.F.R. 8300.514), as such law and regulations existed on January 1, 1985, shall not be liable for any civil damages for any action or actions done while performing duty as a surrogate parent, except for acts or omissions to act constituting gross, willful, or wanton negligence. (Code 1981, § 20-1-5, enacted by Ga. L. 1985, p. 447, § 1.)

**U.S. Code.** — Public Law 94-142, the federal Education for All Handicapped Children Act of 1975, amended or enacted provisions throughout the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.

**20-1-6. Retired Teachers’ Day.**

(a) The Sunday commencing the third week of November of each year is designated as Retired Teachers’ Day.

(b) The Governor may issue annually a proclamation designating the Sunday commencing the third week of November of each year as Retired Teachers’ Day and calling upon public schools and citizens of the state to observe the occasion and to take the opportunity to honor the retired teachers of the state. (Code 1981, § 20-1-6, enacted by Ga. L. 1986, p. 619, § 1.)

**Cross references.** — Holidays and observances generally, T. 1, C. 4.

### **20-1-6.1. Official state school.**

Plains High School is designated as the official Georgia state school. (Code 1981, § 20-1-6.1, enacted by Ga. L. 1997, p. 1060, § 1.)

### **20-1-7. Fraudulent activities with respect to documents conferred by institution of education; penalties.**

(a) No person may buy, sell, create, duplicate, alter, give, or obtain or attempt to buy, sell, create, duplicate, alter, give, or obtain a diploma, certificate, academic record, certificate of enrollment, or other instrument which purports to signify merit or achievement conferred by an institution of education in this state with the intent to use fraudulently such document or to allow the fraudulent use of such document.

(b) Any person who violates subsection (a) of this Code section or who aids another in violating subsection (a) of this Code section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$1,000.00 or by imprisonment for a period not to exceed one year, or both. (Code 1981, § 20-1-7, enacted by Ga. L. 1991, p. 1143, § 1.)

**Law reviews.** — For note on 1991 enactment of this Code section, see 8 Ga. St. U. L. Rev. 66 (1992).

## **OPINIONS OF THE ATTORNEY GENERAL**

**For an update of crimes and offenses** for which the Georgia Crime Information Center is authorized to collect and file identifying data, see 1991 Op. Att'y Gen. No. 91-35.

### **20-1-8. Placement of lottery funds into Construction Reserve Trust Fund.**

Any lottery funds appropriated for purposes of new capital construction shall be placed in a Construction Reserve Trust Fund to be maintained by the appropriate fiscal officers of state government. Funds so placed in the Construction Reserve Trust Fund shall be deemed to be committed for educational purposes and programs in compliance with subsection (d) of Code Section 50-27-13. Any such funds must be designated by project by the appropriate educational agency no later than June 30 of the fiscal year for which the funds were appropriated. Any such funds must be contractually obligated no later than June 30 of the fiscal year following the fiscal year for which the funds were appropriated. Any funds not designated or contractually



obligated within such time periods shall lapse; and additionally any funds not expended as originally designated and obligated within 24 months after the close of the fiscal year for which such funds were originally appropriated shall lapse. Any funds so lapsing shall lapse to the general fund of the state treasury and shall be credited to the Lottery for Education Account. (Code 1981, § 20-1-8, enacted by Ga. L. 1995, p. 701, § 1; Ga. L. 1996, p. 6, § 20.)

**Editor's notes.** — This Code section applies with respect to appropriations for the fiscal year ending June 30, 1995, as well as all future fiscal years.

### **20-1-9. “Local school system,” “local boards of education,” and “county boards of education” defined.**

Except as may otherwise be specifically provided, as used in this title, the term “local school system” shall refer to both any county school system and any independent school system which may be in existence in a county. The terms “local boards of education” and “county boards of education” shall refer to both any county board of education and the board of education of any independent school system which may be in existence in a county. (Code 1981, § 20-1-9, enacted by Ga. L. 1996, p. 378, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1996, this Code section, originally enacted as Code Section 20-1-8, was redesignated as Code Section 20-1-9.

### **20-1-10. Certification by Department of Public Safety required prior to contracting with motor or contract carrier.**

(a) As used in this Code section, the term “educational institution” means any elementary or secondary school, any child care learning center, and any college, university, technical school, or other institution of higher learning.

(b) No educational institution receiving state funds shall enter into an agreement with a motor carrier or contract carrier for the purpose of transporting students without first verifying that such carrier is certified by the Department of Public Safety as required by Article 5 of Chapter 2 of Title 35, the Federal Motor Carrier Safety Administration, or any other similarly required certifying agency. (Code 1981, § 20-1-10, enacted by Ga. L. 2010, p. 409, § 1/SB 392; Ga. L. 2011, p. 752, § 20/HB 142; Ga. L. 2012, p. 580, § 4/HB 865.)

**Effective date.** — This Code section became effective July 1, 2010. See the editor's note for applicability.

**The 2011 amendment,** effective May

13, 2011, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (a).

**The 2012 amendment,** effective July

1, 2012, in the middle of subsection (b), substituted "Department of Public Safety" for "Public Service Commission" and substituted "Article 5 of Chapter 2 of Title 35" for "Article 1 of Chapter 7 of Title 46".

**Editor's notes.** — Ga. L. 2010, p. 409, § 3/SB 392, not codified by the General Assembly, provides that this Code section shall apply to agreements entered into on or after July 1, 2010.

## ARTICLE 2

### DRUG-FREE POSTSECONDARY EDUCATION ACT

**Law reviews.** — For note on 1990 enactment of this article, see 7 Ga. St. U. L. Rev. 379 (1990).

#### OPINIONS OF THE ATTORNEY GENERAL

**First offender treatment as "conviction".** — First offender treatment upon a verdict or plea of guilty is a "conviction" within the meaning of the Drug-free Post-

secondary Education Act (O.C.G.A. § 20-1-20 et seq.), applicable to students in institutions of higher learning. 1992 Op. Att'y Gen. No. 92-10.

#### 20-1-20. Short title.

This article shall be known and may be cited as the "Drug-free Postsecondary Education Act of 1990." (Code 1981, § 20-1-20, enacted by Ga. L. 1990, p. 2037, § 1.)

#### 20-1-21. Legislative findings and intent.

The General Assembly finds that the manufacture, distribution, sale, possession, or use of marijuana, controlled substances, or dangerous drugs in an unlawful manner is a serious threat to the public health, safety, and welfare and to the academic achievement of students enrolled in the public and nonpublic colleges, universities, and postsecondary technical institutes of this state. It is declared to be a primary purpose and goal of this state, of all of its agencies and instrumentalities, and of all of its public officials and employees to take all reasonable steps possible to eradicate the unlawful manufacture, distribution, sale, possession, and use of marijuana, controlled substances, and dangerous drugs. With this purpose in mind, the General Assembly declares that the public and nonpublic colleges, universities, and postsecondary technical institutes in this state must be absolutely free of any person who would knowingly manufacture, distribute, sell, possess, or use marijuana, a controlled substance, or a dangerous drug in an unlawful manner. For this reason, the General Assembly enacts this article. (Code 1981, § 20-1-21, enacted by Ga. L. 1990, p. 2037, § 1.)

**20-1-22. Definitions.**

As used in this article, the term:

(1) “Authority” means the Georgia Student Finance Authority created pursuant to Code Section 20-3-313.

(2) “Controlled substance” means any drug, substance, or immediate precursor included in the definition of the term “controlled substance” in paragraph (4) of Code Section 16-13-21.

(3) “Convicted” or “conviction” refers to a plea of guilty, a finding of guilty by a court of competent jurisdiction, or the acceptance of a plea of nolo contendere or affording of first offender treatment by a court of competent jurisdiction, irrespective of the pendency or availability of any appeal or application for collateral relief.

(4) “Dangerous drug” means any drug or substance defined as such under Code Section 16-13-71.

(5) “Date of conviction” means the date that the trial court determines guilt and enters judgment thereon or the date on which the court accepts a plea of nolo contendere or formally allows a person to receive first offender treatment.

(6) “Marijuana” shall have the same meaning as such term is defined in paragraph (16) of Code Section 16-13-21.

(7) “Nonpublic educational institution” means any postsecondary educational institution not established, operated, or governed by the State of Georgia.

(8) “Public educational institution” means:

(A) Any two-year college, college, university, or other institution of higher learning under the management and control of the Board of Regents of the University System of Georgia; and

(B) Any postsecondary technical school under the management and control of the State Board of the Technical College System of Georgia.

(9) “Student” means any person who is enrolled as a student in courses for academic credit on a full-time, part-time, temporary, or intermittent basis in any public or nonpublic educational institution. (Code 1981, § 20-1-22, enacted by Ga. L. 1990, p. 2037, § 1; Ga. L. 2011, p. 632, § 3/HB 49.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for

“State Board of Technical and Adult Education” in subparagraph (8)(B).

**Code Commission notes.** — Pursuant



to Code Section 28-9-5, in 1990, the word "on" was inserted following "academic credit" in paragraph (9).

### **20-1-23. Disciplinary action for student of public educational institution.**

Any student of a public educational institution who is convicted, under the laws of this state, the United States, or any other state, of any felony offense involving the manufacture, distribution, sale, possession, or use of marijuana, a controlled substance, or a dangerous drug shall as of the date of conviction be suspended from the public educational institution in which such person is enrolled. Except for cases in which the institution has previously taken disciplinary action against a student for the same offense, such suspension shall be effective as of the date of conviction, even though the educational institution may not complete all administrative actions necessary to implement such suspension until a later date. Except for cases in which the institution has already imposed disciplinary sanctions for the same offense, such suspension shall continue through the end of the term, quarter, semester, or other similar period for which the student was enrolled as of the date of conviction. The student shall forfeit any right to any academic credit otherwise earned or earnable for such term, quarter, semester, or other similar period; and the educational institution shall subsequently revoke any such academic credit which is granted prior to the completion of administrative actions necessary to implement such suspension. (Code 1981, § 20-1-23, enacted by Ga. L. 1990, p. 2037, § 1.)

### **OPINIONS OF THE ATTORNEY GENERAL**

**Conviction of felony after end of academic period.** — Although the Drug-free Postsecondary Education Act of 1990, O.C.G.A. § 20-1-20 et seq., does not require the suspension of a student convicted of a felony involving the illegal use of drugs when the conviction occurs after

the end of an academic period but prior to the commencement of the following academic period, the policy manual of the board of regents would permit such disciplinary action during the pendency of criminal charges or after final conviction. 1992 Op. Att'y Gen. No. 92-21.

### **20-1-24. Disciplinary action for student of nonpublic educational institution.**

(a) Any student of a nonpublic educational institution who is convicted, under the laws of this state, the United States, or any other state, of any felony offense involving the manufacture, distribution, sale, possession, or use of marijuana, a controlled substance, or a dangerous drug shall as of the date of conviction be denied state funds for any loans, grants, or scholarships administered under the authority

of Part 3 of Article 7 of Chapter 3 of this title, the “Georgia Student Finance Authority Act,” or similar loans, grants, or scholarships, including but not limited to Georgia Higher Education Loan Program loans, student incentive grants, or tuition equalization grants. The authority is authorized to define such terms and prescribe such rules, regulations, and procedures as may be reasonable and necessary to carry out the purposes of this article.

(b) Such denial of state funds shall be effective as of the first day of the term, quarter, semester, or other similar period for which the student was enrolled immediately following the date of conviction or the date on which the court accepts a plea of nolo contendere or formally allows a student to receive first offender treatment and shall continue through the end of such term, quarter, semester, or other similar period for which the student was enrolled. Any nonpublic educational institution operating within this state that receives state funds shall agree to comply with this article in order to be eligible for its students to receive state funds through scholarships, grants, or loan programs. (Code 1981, § 20-1-24, enacted by Ga. L. 1990, p. 2037, § 1; Ga. L. 1991, p. 94, § 20.)

#### **20-1-25. Additional sanctions permissible.**

The suspension sanctions and sanctions involving denial of state funds as prescribed in this article are intended as minimum sanctions, and nothing in this article shall be construed to prohibit any educational institution from establishing and implementing additional or more stringent sanctions for felony offenses and other conduct involving the unlawful manufacture, distribution, sale, possession, or use of marijuana, a controlled substance, or a dangerous drug. (Code 1981, § 20-1-25, enacted by Ga. L. 1990, p. 2037, § 1.)

### **OPINIONS OF THE ATTORNEY GENERAL**

**Conviction of felony after end of academic period.** — Although the Drug-free Postsecondary Education Act of 1990, O.C.G.A. § 20-1-20 et seq., does not require the suspension of a student convicted of a felony involving the illegal use of drugs when the conviction occurs after the end of an academic period but prior to the commencement of the following academic period, the policy manual of the board of regents would permit such disciplinary action during the pendency of criminal charges or after final conviction. 1992 Op. Att’y Gen. No. 92-21.

#### **20-1-26. Promulgation of administrative procedures for implementation of article.**

Administrative procedures for the implementation of this article shall be promulgated for the educational institutions under their respective management and control by the Board of Regents of the

University System of Georgia and the State Board of the Technical College System of Georgia or the individual nonpublic educational institutions. Such procedures shall provide for relief from sanctions previously imposed under this article against a person whose conviction is subsequently overturned on appeal or through collateral relief. (Code 1981, § 20-1-26, enacted by Ga. L. 1990, p. 2037, § 1; Ga. L. 2011, p. 632, § 3/HB 49.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “State Board of Technical and Adult Education” in the first sentence of this Code section.

### **20-1-27. Applicability of article.**

This article shall apply only with respect to felony offenses committed on or after July 1, 1990; provided, however, that nothing in this Code section shall prevent any educational institution from implementing sanctions additional to or other than those provided for in this article with respect to offenses committed prior to July 1, 1990. (Code 1981, § 20-1-27, enacted by Ga. L. 1990, p. 2037, § 1.)



## CHAPTER 1A

## EARLY CARE AND LEARNING

## Article 1

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## Article 3

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- 20-1A-60. Definitions.  
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bers; length of terms; appointments; removal of members.

20-1A-62. Appointment of chairperson and vice chairperson; meetings; compensation of members of council.

Sec.

20-1A-63. Obligations of council.

20-1A-64. Functions and authority of lead agency and department.

**Editor's notes.** — Ga. L. 1996, p. 167, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Education Reform Act of 1996.'"

**Administrative rules and regula-**

**tions.** — Family day care homes, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Family and Children Services, Group Day Care Services, Chapter 290-2-3.

## ARTICLE 1

### GENERAL PROVISIONS

**Editor's notes.** — Ga. L. 2004, p. 645, § 1, effective October 1, 2004, designated the existing provisions of this chapter as this article.

**Administrative rules and regulations.** — Child care learning centers, Of-

ficial Compilation of the Rules and Regulations of the State of Georgia, Bright from the Start Georgia Department of Early Care and Learning, Chapter 591-1-1.

#### 20-1A-1. Creation.

The Department of Early Care and Learning is created as a department of the executive branch of state government and shall have the duties, responsibilities, functions, powers, and authority set forth in this chapter and otherwise provided by law. The Department of Early Care and Learning is the successor to the Office of School Readiness and shall have the duties, responsibilities, functions, powers, authority, employees, office equipment, furniture, and other assets formerly held by the Office of School Readiness. The Department of Early Care and Learning shall be a separate budget unit. (Code 1981, § 20-1A-1, enacted by Ga. L. 1996, p. 167, § 2; Ga. L. 2004, p. 645, § 1.)

**Law reviews.** — For review of 1996 education legislation, see 13 Ga. St. U. L. Rev. 160 (1996).

#### 20-1A-2. Definitions.

As used in this chapter, the term:

- (1) "Board" means the Board of Early Care and Learning.

(2) "Child care learning center" means a day-care center that participates in Georgia's Pre-K Program.

(3) "Commissioner" means the commissioner of the Department of Early Care and Learning.

(4) "Day-care center" means any place operated by a person, society, agency, corporation, institution, or group wherein are received for pay for group care for less than 24 hours per day, without transfer of legal custody, 19 or more children under 18 years of age; provided, however, that this term shall not include a private school which provides kindergarten through grade 12 education, meets the requirements of Code Section 20-2-690, and is accredited by one or more of the entities listed in subparagraph (A) of paragraph (6) of Code Section 20-3-519 and which provides care before, after, or both before and after the customary school day to its students as an auxiliary service to such students during the regular school year only.

(5) "Department" means the Department of Early Care and Learning.

(6) "Early care and education programs" include all family day-care homes, group day-care homes, day-care centers, and child care learning centers.

(7) "Early childhood" means the period of childhood from birth to age six.

(8) "Family day-care home" means a private residence operated by any person who receives therein for pay for supervision and care fewer than 24 hours per day, without transfer of legal custody, at least three but not more than six children under 18 years of age who are not related to such person and whose parents or guardians are not residents in the same private residence.

(9) "Group day-care home" means any place operated by any person or group wherein are received for pay not less than seven nor more than 18 children under 18 years of age for care and supervision for less than 24 hours per day. (Code 1981, § 20-1A-2, enacted by Ga. L. 1996, p. 167, § 2; Ga. L. 2004, p. 645, § 1; Ga. L. 2008, p. 798, § 1/HB 1169.)

### **20-1A-3. Commissioner; board; duties and powers; salary; personnel; rules and regulations.**

(a) There is created a Board of Early Care and Learning and a commissioner of early care and learning.

(b) The board shall consist of one member from each congressional district appointed by the Governor. In as far as it is practical, the



members of the board shall be representative of all areas and functions encompassed within the early childhood care and education community. In appointing members to their initial terms, the Governor shall designate five members for two-year terms, four members for three-year terms, and four members for five-year terms. Subsequent appointments shall be for five-year terms. Members shall serve until their successors are appointed. In the event of a vacancy on the board for any reason other than expiration of a term, the Governor shall appoint a person from the same congressional district to fill the vacancy for the unexpired term.

(c) The board shall elect from its members a chairperson and such other officers as the board considers necessary. The board shall adopt bylaws for the conduct of its activities. The members of the board shall receive per diem and expense reimbursement as shall be determined and approved by the Office of Planning and Budget in conformity with rates and allowances determined for members of other state boards.

(d) The board shall determine policies and promulgate rules and regulations for the operation of the department including:

(1) Functions formerly performed by the Office of School Readiness, including, but not limited to, Even Start;

(2) Functions transferred to the department from the Department of Human Resources (now known as the Department of Human Services) relating to day-care centers, group day-care homes, family day-care homes, and other functions as agreed upon by the department and the Department of Human Resources (now known as the Department of Human Services) in accordance with Code Section 20-1A-8;

(3) Functions transferred to the department from the Georgia Child Care Council pursuant to Code Section 20-1A-63; and

(4) Functions relating to early childhood education programs transferred from the Department of Education by agreement in accordance with Code Section 20-1A-17.

(e) The board shall oversee the budget of the department and shall submit an annual request for funding to the Office of Planning and Budget in accordance with Code Section 45-12-78.

(f) The commissioner shall be the chief administrative and executive officer of the department. The commissioner shall be appointed by and serve at the pleasure of the Governor. The commissioner shall be in the unclassified service as defined by Code Section 45-20-2 and shall receive a salary to be determined by the Governor.

(g) The commissioner shall have the authority to employ all personnel of the department, subject to the provisions of this chapter, all

applicable provisions of other laws governing public employment, and the policies, procedures, rules, and regulations of the board. (Code 1981, § 20-1A-3, enacted by Ga. L. 1996, p. 167, § 2; Ga. L. 2004, p. 645, § 1; Ga. L. 2009, p. 453, § 2-9/HB 228; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-21/HB 642.)

**The 2012 amendment**, effective July 1, 2012, substituted “as defined by Code Section 45-20-2” for “of the State Personnel Administration” in the last sentence of subsection (f).

**Editor’s notes.** — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be trans-

ferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

## 20-1A-4. Powers and duties.

The Department of Early Care and Learning shall have the following powers and duties:

(1) To administer such programs and services as may be necessary for the operation and management of voluntary pre-kindergarten, which shall be known as “Georgia’s Pre-K Program”;

(2) To administer such programs and services as may be necessary for the operation and management of preschool and child development programs, such as Even Start and child care regulation and food programs;

(3) To act as the agent of the federal government in conformity with this chapter and the administration of any federal funds granted to the state to aid in the furtherance of any functions of the department;

(4) To assist local units of administration in this state so as to assure the proliferation of services under this chapter;

(5) To regulate early care and education programs in accordance with this chapter;

(6) To perform the functions set out in Code Section 20-1A-64, relating to improvement of the quality, availability, and affordability of child care in this state;

(7) To serve as the Head Start state collaboration office;

(8) To establish and collect annual fees for licensure, registration, or commission of early care and education programs. Such fees so established shall be reasonable and shall be determined in such a

manner that the total amount of fees established shall help defray the direct and indirect costs to the department in performing such function. The department shall remit all fees collected to the general fund of the state;

(9) To perform any other functions as agreed upon between the department and the Department of Human Resources (now known as the Department of Human Services), pursuant to Code Section 20-1A-8;

(10) To perform any other functions as agreed upon between the department and the Department of Education, in accordance with Code Section 20-1A-17; and

(11) To exercise the powers reasonably necessary to accomplish the purposes of this chapter, including, but not limited to, contracting for services. (Code 1981, § 20-1A-4, enacted by Ga. L. 1996, p. 167, § 2; Ga. L. 2002, p. 1083, § 1; Ga. L. 2004, p. 645, § 1; Ga. L. 2009, p. 453, § 2-10/HB 228; Ga. L. 2010, p. 9, § 1-45/HB 1055.)

**The 2010 amendment**, effective May 12, 2010, added paragraph (8), and redesignated former paragraphs (8) through (10) as present paragraphs (9) through (11), respectively.

#### **20-1A-5. Impact of transfer of operations on individuals.**

This chapter shall not be construed to impair or affect the rights of persons previously transferred to the Office of School Readiness who were members of the Teachers Retirement System of Georgia created in Chapter 3 of Title 47 and who elected to continue membership in such retirement system in accordance with previous law. (Code 1981, § 20-1A-5, enacted by Ga. L. 1996, p. 167, § 2; Ga. L. 2004, p. 645, § 1.)

#### **20-1A-6. Department to succeed to applicable rules and regulations.**

The department shall succeed to all rules, regulations, policies, procedures, and pending and finalized administrative orders of the Office of School Readiness which are in effect on September 30, 2004. Such rules, regulations, policies, and procedures shall remain in effect until amended, repealed, superseded, or nullified by the board or commissioner, as applicable. (Code 1981, § 20-1A-6, enacted by Ga. L. 1996, p. 167, § 2; Ga. L. 2004, p. 645, § 1.)

#### **20-1A-7. Pre-kindergarten name change required in publications, posters, banners, and signs.**

Each newly printed publication, poster, banner, or sign created for the pre-kindergarten program by the department or a provider of



pre-kindergarten services shall refer to the program as “Georgia’s Pre-K Program.” (Code 1981, § 20-1A-7, enacted by Ga. L. 2002, p. 1083, § 2; Ga. L. 2004, p. 645, § 1.)

**20-1A-8. Transfer of functions, powers, personnel, equipment, and assets to department; funding.**

(a) Effective October 1, 2004, the department shall carry out all of the functions and exercise all of the powers formerly held by the Department of Human Resources (now known as the Department of Human Services) for the regulation and licensure of early care and education programs and any other functions as agreed upon by the department and the Department of Human Resources. Subject to subsection (c) of this Code section, all persons employed by and positions authorized for the Department of Human Resources to perform functions relating to the licensure and certification of early care and education programs and any other functions as agreed upon by the department and the Department of Human Resources on September 30, 2004, shall on October 1, 2004, be transferred to the department. All office equipment, furniture, and other assets in possession of the Department of Human Resources which are used or held exclusively or principally by personnel transferred under this subsection shall be transferred to the department on October 1, 2004.

(b) Effective October 1, 2004, notwithstanding the advisory functions of the Georgia Child Care Council included in Code Section 20-1A-63, the department shall carry out the functions and exercise the powers formerly held by the Georgia Child Care Council under former Article 11 of Chapter 5 of Title 49. Subject to subsection (c) of this Code section, all persons employed by and positions authorized for the Georgia Child Care Council to perform functions relating to the recommendation of measures to improve the quality, availability, and affordability of child care in this state on September 30, 2004, shall on October 1, 2004, be transferred to the department. All office equipment, furniture, and other assets in possession of the Georgia Child Care Council or the Department of Human Resources, (now known as the Department of Human Services) which are used or held exclusively or principally by personnel transferred under this subsection shall be transferred to the department on October 1, 2004.

(c) All transfers of employees and assets provided for in subsections (a) and (b) of this Code section shall be subject to the approval of the commissioner, and such personnel or assets shall not be transferred if the commissioner determines that a specific employee or asset should remain with the transferring agency.

(d) Employees of the department shall serve in the unclassified service as defined by Code Section 45-20-2. Persons who have trans-



ferred to the department pursuant to subsections (a) and (b) of this Code section who are in the classified service as defined by Code Section 45-20-2 at the time of the transfer may elect to remain in such classified service and be governed by the provisions thereof; provided, however, that if any such person accepts a promotion or transfers to another position, that person shall become an employee in the unclassified service.

(e) All rights, credits, and funds in the Employees' Retirement System of Georgia created in Chapter 2 of Title 47 which are possessed by state personnel transferred by provisions of this Code section to the department, or otherwise held by persons at the time of employment with the department, are continued and preserved, it being the intention of the General Assembly that such persons shall not lose any rights, credits, or funds to which they may be entitled prior to becoming employees of the department. No employment benefit of any employee transferring to the department shall be impaired.

(f) Funding for functions and positions transferred to the department under this Code section shall be transferred as provided in Code Section 45-12-90. (Code 1981, § 20-1A-8, enacted by Ga. L. 2004, p. 645, § 1; Ga. L. 2009, p. 453, § 2-11/HB 228; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-22/HB 642.)

**The 2012 amendment**, effective July 1, 2012, in subsection (d), in the first sentence, deleted "of the State Personnel Administration" following "service" and substituted "45-20-2" for "45-20-6", and substituted "as defined by Code Section 45-20-2" for "of the State Personnel Administration" in the second sentence.

**Editor's notes.** — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were as-

signed to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

## **20-1A-9. Authority to license and regulate day-care centers, group day-care homes, and family day-care homes transferred to department.**

The department shall succeed to all rights and responsibilities relating to licensure and regulation of day-care centers, group day-care homes, and family day-care homes, including such rules, regulations, policies, procedures, and pending and finalized administrative orders of the Department of Human Resources (now known as the Department of Human Services), the Georgia Child Care Council, and the Office of State Administrative Hearings, where applicable, which are in effect on September 30, 2004, and which relate to the functions transferred to the department pursuant to Code Section 20-1A-8. Such rights, respon-

sibilities, licenses issued pursuant to previous law, procedures, and orders shall remain in effect until amended, repealed, superseded, or nullified by the commissioner. Such rules, regulations, and policies shall remain in effect until amended, repealed, superseded, or nullified by the board. (Code 1981, § 20-1A-9, enacted by Ga. L. 2004, p. 645, § 1; Ga. L. 2009, p. 453, § 2-12/HB 228.)

**20-1A-10. Regulation of early care and education programs; “licensed day-care center” defined.**

(a) The department is authorized and empowered to establish, maintain, extend, and improve throughout the state, within the limits of funds appropriated for such purposes, the regulation of early care and education programs by providing consultation and making recommendations concerning establishment and implementation of such programs and by licensing and inspecting periodically all such programs to ensure their adherence to this chapter and rules and regulations promulgated by the board.

(b) Day-care centers and child care learning centers operated as part of a local church ministry or a nonprofit religious school or a nonprofit religious charitable organization may notify the department annually and be commissioned in lieu of being licensed upon request for commission. Commissioned day-care centers and child care learning centers shall operate in accordance with the same procedures, standards, rules, and regulations which are established by the board for the operation of licensed day-care centers and child care learning centers. Any day-care center or child care learning center operated as part of a local church ministry or a nonprofit religious school or a nonprofit religious charitable organization may elect to apply for a commission as provided for in subsection (c) of this Code section.

(c) All early care and education programs shall be licensed or commissioned annually by the department in accordance with procedures, standards, rules, and regulations to be established by the board; provided, however, that the department may require persons who operate family day-care homes to register with the department.

(d) The department shall publish in print or electronically and make available to early care and education programs and interested persons a list of guidelines for quality child care.

(e) After an early care and education program has been licensed, commissioned, or registered by the department as provided in this chapter, the program shall not be required to have a permit to operate a food service establishment as required in Code Section 26-2-371, provided that rules and regulations for food service have been incorporated in the regulations for licensing, commissioning, or registering such programs.

(f) The department shall not be authorized to prescribe, question, or regulate the specific content of educational curriculum taught by an early care and education program, except to the extent that a program operates Georgia's Pre-K Program or any other voluntary educational program administered by the department.

(g) Persons who operate early care and education programs shall be required to post in a conspicuous place next to telephones in the home or center the telephone numbers of the nearest or applicable providers of emergency medical, police, and fire services.

(h) Persons who operate early care and education programs shall post signs prohibiting smoking to carry out the purposes of Chapter 12A of Title 31.

(i) Group day-care homes, day-care centers, and child care learning centers shall provide a minimum of 35 square feet of usable space consisting of indoor play areas, rest areas, and dining facilities for each child present in the facility. Day-care centers and child care learning centers will be allowed to designate in writing to the department two one-hour periods daily during which 25 square feet of usable space per child for children aged three years and older may be provided. Notwithstanding the limitation to 18 children prescribed in Code Section 20-1A-2, group day-care homes will be allowed to designate in writing to the department two one-hour periods daily during which 25 square feet of usable space per child for children aged three years and older may be provided. Notwithstanding the limitation to six children prescribed in Code Section 20-1A-2, a family day-care home operator may care for two additional children aged three years and older for two designated one-hour periods daily. Notwithstanding the provisions of this subsection, all other applicable rules and regulations shall apply.

(j) The department shall assist applicants, licensees, registrants, or persons holding commissions in meeting rules and regulations of the department for early care and education programs.

(k)(1) Application for a license, commission, or registration for an early care and education program shall be made to the department upon forms furnished by the department. Upon receipt of an application for a license, registration, or commission and upon presentation by the applicant of evidence that the early care and education program meets the rules and regulations prescribed by the department, the department shall issue such early care and education program a license, registration, or commission for a one-year period.

(2) On and after May 12, 2010, the following annual fees shall apply to applications for licensure, registration, or commission as a day-care center, child care learning center, group day-care home, or family day-care home:



|  |         |
|--|---------|
| (A) Capacity of fewer than 25 children ..... | \$50.00 |
| (B) Capacity of 26 to 50 children .....      | 100.00  |
| (C) Capacity of 51 to 100 children .....     | 150.00  |
| (D) Capacity of 101 to 200 children .....    | 200.00  |
| (E) Capacity of more than 200 children ..... | 250.00  |

(l) If the department finds that any early care and education program applicant does not meet rules and regulations prescribed by the department but is attempting to meet such rules and regulations, the department may, in its discretion, issue a temporary license, registration, or commission to such early care and education program, but such temporary license, registration, or commission shall not be issued for more than a one-year period. Upon presentation of satisfactory evidence that such program is making progress toward meeting prescribed rules and regulations of the department, the department may, in its discretion, reissue such temporary license, registration, or commission for one additional period not to exceed one year. As an alternative to a temporary license, registration, or commission, the department, in its discretion, may issue a restricted license, registration, or commission which states the restrictions on its face.

(m) The department shall refuse to issue a license, registration, or commission upon a showing of:

- (1) Noncompliance with the rules and regulations for day-care centers, family day-care homes, group day-care homes, or child care learning centers which are designated in writing to the facilities as being related to children’s health and safety;
- (2) Flagrant and continued operation of an unlicensed, unregistered, or uncommissioned facility in contravention of the law;
- (3) Prior license, registration, or commission denial or revocation within one year of application; or
- (4) Failure to pay the annual fee for licensure, registration, or commission of early care and education programs.

(n) All licensed, registered, or commissioned early care and education programs shall prominently display the license, registration, or commission issued to such program by the department at some point near the entrance of the premises of such program that is open to view by the public.

(o) The department’s action revoking or refusing to renew or issue a license, registration, or commission required by this Code section shall be preceded by notice and opportunity for a hearing and shall constitute a contested case within the meaning of Chapter 13 of Title 50, the

“Georgia Administrative Procedure Act,” except that only 30 days’ notice in writing from the commissioner’s designee shall be required prior to license, registration, or commission revocation and except that hearings held relating to such action by the department may be closed to the public if the hearing officer determines that an open hearing would be detrimental to the physical or mental health of any child who will testify at that hearing.

(p) It shall be the duty of the department to inspect at regular intervals all licensed, registered, or commissioned early care and education programs within the state. The department shall have right of entrance, privilege of inspection, and right of access to all children under the care and control of the licensee, registrant, or commissionee.

(q) If any flagrant abuses, derelictions, or deficiencies are made known to the department or its duly authorized agents during their inspection of any early care and education program or if, at any time, such are reported to the department, the department shall immediately investigate such matters and take such action as conditions may require.

(r) If abuses, derelictions, or deficiencies are found in the operation and management of any early care and education program, including failure to pay the annual fee for licensure, registration, or commission, they shall be brought immediately to the attention of the management of such program; and if correctable, but not corrected within a reasonable time, the department shall revoke the license, registration, or commission of such program in the manner prescribed in this Code section.

(s) The department may require periodic reports from early care and education programs in such forms and at such times as the department may prescribe.

(t) Any person who shall operate an early care and education program without a license, registration, or commission issued by the department shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$50.00 nor more than \$200.00 for each such offense. Each day of operation without a license, registration, or commission shall constitute a separate offense.

(u) The department may, without regard to the availability of other remedies, including administrative remedies, seek an injunction against the continued operation of an early care and education program without a license, registration, or commission or the continued operation of an early care and education program in willful violation of this chapter or of any regulation of the department or of any order of the department.

(v) The term “licensed day-care center” shall include a commissioned day-care center and commissioned child care learning center and any references in this Code to a licensed day-care center, including criminal, administrative, and civil provisions applicable to licensed day-care centers, shall include and apply to commissioned day-care centers and commissioned child care learning centers unless otherwise provided in this Code section. (Code 1981, § 20-1A-10, enacted by Ga. L. 2004, p. 645, § 1; Ga. L. 2010, p. 9, § 1-46/HB 1055; Ga. L. 2010, p. 838, § 10/SB 388.)

**The 2010 amendments.** — The first 2010 amendment, effective May 12, 2010, in subsection (k), designated the existing provisions as paragraph (k)(1) and added paragraph (k)(2); in subsection (m), deleted “or” at the end of paragraph (m)(2), substituted “; or” for the period at the end of paragraph (m)(3), and added paragraph (m)(4); and, in subsection (r), inserted “including failure to pay the annual fee for licensure, registration, or commission,” in the middle. The second 2010 amendment,

effective June 3, 2010, inserted “in print or electronically” in subsection (d).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2009, “Chapter 12A of Title 31” was substituted for “paragraph (4) of subsection (a) of Code Section 16-12-2” in subsection (h).

Pursuant to Code Section 28-9-5, in 2010, “On and after May 12, 2010,” was substituted for “On and after the effective date of this paragraph,” at the beginning of paragraph (k)(2).

## 20-1A-11. Penalties; notice.

(a) Any person who violates the provisions of Code Section 20-1A-10 or who hinders, obstructs, or otherwise interferes with any representative of the department in the discharge of that person’s official duties in making inspections as provided in such Code section or in investigating complaints as provided in such Code section shall be guilty of a misdemeanor.

(b)(1) Any person who:

(A) Violates any licensing, commissioning, or registration provision of this chapter or any rule, regulation, or order issued under this chapter or any term, condition, or limitation of any license, commission, or registration certificate under this chapter thereby subjecting a child in care to injury or a life-threatening situation; or

(B) Commits any violation for which a license, commission, or registration certificate may be revoked under rules or regulations issued pursuant to this chapter

may be subject to a civil penalty, to be imposed by the department, not to exceed \$500.00. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

(2) Whenever the department proposes to subject a person to the imposition of a civil penalty under this subsection, it shall notify such person in writing:



(A) Setting forth the date, facts, and nature of each act or omission with which the person is charged;

(B) Specifically identifying the particular provision or provisions of the Code section, rule, regulation, order, license, commission, or registration certificate involved in the violation; and

(C) Advising of each penalty which the department proposes to impose and its amount.

Such written notice shall be sent by registered or certified mail or statutory overnight delivery by the department to the last known address of such person. The person so notified shall be granted an opportunity to show in writing, within such reasonable period as the department shall by rule or regulation prescribe, why such penalty should not be imposed. The notice shall also advise such person that, upon failure to pay the civil penalty subsequently determined by the department, if any, the penalty may be collected by civil action. Any person upon whom a civil penalty is imposed may appeal such action pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(3) A civil penalty finally determined under this Code section may be collected by civil action in the event that such penalty is not paid as required. On the request of the department, the Attorney General is authorized to institute a civil action to collect a penalty imposed pursuant to this subsection. The Attorney General shall have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred to the Attorney General for collection.

(4) All moneys collected from civil penalties shall be paid to the state for deposit in the general fund. (Code 1981, § 20-1A-11, enacted by Ga. L. 2004, p. 645, § 1; Ga. L. 2012, p. 775, § 20/HB 942.)

**The 2012 amendment**, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted "Code Section 20-1A-10" for "Code Section 20-2A-10" in subsection (a).

**20-1A-12. Application; "license" defined; actions authorized by department in event of violations; investigations; governmental immunity.**

(a) This Code section shall be applicable to any early care and education program which is subject to regulation by the department in accordance with this chapter. For purposes of this Code section, the term "license" shall be used to refer to any license, registration, or commission issued by the department pursuant to the provisions of this chapter.



(b) The department shall have the authority to take any of the actions enumerated in subsection (c) of this Code section upon a finding that the applicant or holder of a license has:

(1) Knowingly made any false statement of material information in connection with the application for a license, or in statements made or on documents submitted to the department as part of an inspection, survey, or investigation, or in the alteration or falsification of records maintained by the early care and education program;

(2) Failed or refused to provide the department with access to the premises subject to regulation or information pertinent to the initial or continued licensing of the program;

(3) Failed to comply with the licensing requirements of this state;

(4) Failed to pay the annual fee for licensure, registration, or commission of early care and education programs; or

(5) Failed to comply with any provisions of this Code section.

(c) When the department finds that any applicant or holder of a license has violated any provision of subsection (b) of this Code section or laws, rules, regulations, or formal orders related to the initial or continued licensing of the program, the department, subject to notice and opportunity for hearing, may take any of the following actions:

(1) Refuse to grant a license; provided, however, that the department may refuse to grant a license without holding a hearing prior to taking such action;

(2) Administer a public reprimand;

(3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;

(4) Prohibit any applicant or holder of a license from allowing a person who previously was involved in the management or control, as defined by rule, of any program which has had its license revoked or denied within the past 12 months to be involved in the management or control of such program;

(5) Revoke any license;

(6) Impose a fine, not to exceed a total of \$25,000.00, of up to \$500.00 per day for each violation of a law, rule, regulation, or formal order related to the initial or ongoing licensing of any program;

(7) Impose a late fee of up to \$250.00 for failure of an early care and education program to pay the annual fee for licensure, registration, or commission within 30 days of the due date as established by the department; or

(8) Limit or restrict any license as the department deems necessary for the protection of the public, including, but not limited to, restricting some or all services of or admissions into a program for a time certain.

In taking any of the actions enumerated in this subsection, the department shall consider the seriousness of the violation, including the circumstances, extent, and gravity of the prohibited acts, and the hazard or potential hazard created to the health or safety of the public.

(d) The department may deny a license or otherwise restrict a license for any applicant who has had a license denied, revoked, or suspended within one year of the date of an application or who has transferred ownership or governing authority of a program subject to regulation by the department within one year of the date of a new application when such transfer was made in order to avert denial, revocation, or suspension of a license.

(e) With regard to any contested case instituted by the department pursuant to this Code section or other provisions of law which may now or hereafter authorize remedial or disciplinary grounds and action, the department may, in its discretion, dispose of the action so instituted by settlement. In such cases, all parties, successors, and assigns to any settlement agreement shall be bound by the terms specified in such agreement and violation of such agreement thereof by any applicant or holder of a license shall constitute grounds for any action enumerated in subsection (c) of this Code section.

(f) The department shall have the authority to make public or private investigations or examinations inside or outside of this state to determine whether the provisions of this Code section or any other law, rule, regulation, or formal order relating to the licensing of a program has been violated. Such investigations may be initiated at any time, in the discretion of the department, and may continue during the pendency of any action initiated by the department pursuant to subsection (c) of this Code section.

(g) For the purpose of conducting any investigation, inspection, or survey, the department shall have the authority to require the production of any books, records, papers, or other information related to the initial or continued licensing of any program.

(h) Pursuant to the investigation, inspection, and enforcement powers given to the department by this Code section and other applicable laws, the department may assess against a program reasonable and necessary expenses incurred by the department pursuant to any administrative or legal action required by the failure of the program to fully comply with the provisions of any law, rule, regulation, or formal order related to the initial or continued licensing. Assessments shall not

include attorney's fees and expenses of litigation, shall not exceed other actual expenses, and shall only be assessed if such investigations, inspections, or enforcement actions result in adverse findings, as finally determined by the department, pursuant to administrative or legal action.

(i) For any action taken or any proceeding held under this Code section or under color of law, except for gross negligence or willful or wanton misconduct, the department, when acting in its official capacity, shall be immune from liability and suit to the same extent that any judge of any court of general jurisdiction in this state would be immune.

(j) In an administrative or legal proceeding under this Code section, a person or entity claiming an exemption or an exception granted by law, rule, regulation, or formal order has the burden of proving this exemption or exception.

(k) This Code section and all actions resulting from its provisions shall be administered in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(l) The provisions of this Code section shall be supplemental to and shall not operate to prohibit the department from acting pursuant to those provisions of law which may now or hereafter authorize remedial or disciplinary grounds and action for the department. In cases where those other provisions of law so authorize other disciplinary grounds and actions, but this Code section limits such grounds or actions, those other provisions shall apply.

(m) The board is authorized to promulgate rules and regulations to implement the provisions of this Code section. (Code 1981, § 20-1A-12, enacted by Ga. L. 2004, p. 645, § 1; Ga. L. 2010, p. 9, § 1-46.1/HB 1055; Ga. L. 2011, p. 752, § 20/HB 142.)

**The 2010 amendment**, effective May 12, 2010, in subsection (b), deleted "or" at the end of paragraph (b)(3), added paragraph (b)(4), and redesignated former paragraph (b)(4) as present paragraph (b)(5); and, in subsection (c), deleted "or" at the end of paragraph (c)(6), added paragraph (c)(7), and redesignated former

paragraph (c)(7) as present paragraph (c)(8).

**The 2011 amendment**, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted "within 30 days of the due date" for "within 30 days of due date" in paragraph (c)(7).

## **20-1A-13. Emergency placement of monitors; emergency closure upon minor's death; requirements and procedures.**

(a) As used in this Code section, the term:

(1) "Emergency order" or "order" means a written directive by the commissioner or the commissioner's designee placing a monitor in an



early care and education program or providing notice of intended emergency closure of an early care and education program.

(2) "Monitor" means a person designated by the department to remain on site in a program as an agent of the department, observing conditions.

(3) "Preliminary hearing" means a hearing held by the Office of State Administrative Hearings as soon as possible after the order is entered at the request of a program which has been affected by an emergency order placing a monitor in the program or upon notice of intended emergency closure of a program in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(b)(1) The commissioner or his or her designee may order the emergency placement of a monitor or monitors in an early care and education program upon a finding that rules and regulations of the department are being violated which threaten the health, safety, or welfare of children in the care of the program and when one or more of the following conditions are present:

(A) The program is operating without a license, commission, or registration;

(B) The department has denied application for license, registration, or commission or has initiated action to revoke the existing license, registration, or commission of the program; or

(C) Children are suspected of being subjected to injury or life-threatening situations or the health or safety of a child or children is in danger.

(2) A monitor may be placed in a program for no more than ten consecutive calendar days, during which time the monitor shall observe conditions and regulatory compliance with any recommended remedial action of the department. Upon expiration of the ten-day period, should the conditions warrant, the initial ten-day period may be extended for an additional ten-day period. The monitor shall report to the department. The monitor shall not assume any administrative or child-caring responsibility within the program, nor shall the monitor be liable for any actions of the program. The salary and related costs and travel and subsistence allowance as defined by department policy of placing a monitor in a program shall be reimbursed to the department by the program, unless the order placing the monitor is determined to be invalid in a contested case or by final adjudication by a court of competent jurisdiction, in which event the cost shall be paid by the department.

(c)(1) The commissioner or his or her designee may issue an order providing notice of intended emergency closure of an early care and education program:

(A) Upon the death of a minor at such program, unless such death was medically anticipated or no serious rule violations related to the death by the program were determined by the department; or

(B) Where a child's safety or welfare is in imminent danger.

(2) If a preliminary hearing is not requested pursuant to subsection (f) of this Code section, the commissioner shall immediately close such program for a period of not more than 21 days. If a preliminary hearing is requested pursuant to subsection (f) of this Code section, the commissioner may place a monitor in the program until the Office of State Administrative Hearings issues a decision, which shall be considered the final decision of the agency, on the emergency closure. If the Office of State Administrative Hearings finds that the emergency closure is warranted, the commissioner shall immediately close such program for a period of not more than 21 days. If the Office of State Administrative Hearings finds that the emergency closure is not warranted, the commissioner shall not order the emergency closure of the program, but may continue investigating the incident and may place a monitor in the program in accordance with this Code section.

(3) Upon a closure, the program shall be required to immediately notify the parent or guardian of each child enrolled in the program. Upon a closure, the commissioner or his or her designee shall immediately conduct a review into the circumstances of the minor's death or the circumstances where a child's safety or welfare is in imminent danger. If the commissioner determines that the program where such minor's death occurred or where imminent danger exists fails to meet the specifications and requirements of this chapter, the commissioner shall immediately revoke such program's license in accordance with subsection (o) of Code Section 20-1A-10. The program shall have the right to appeal the revocation in accordance with subsection (o) of Code Section 20-1A-10; provided, however, that the program shall remain closed until the appeal decision is issued. If the commissioner determines that the administration or conditions of the program were not the cause of the minor's death or that a child's safety and welfare is not in imminent danger or if the department has not issued a revocation notice within the initial closure period, the commissioner shall immediately reopen the program for its continued operation.

(d) An emergency order shall contain the following:

- (1) The scope of the order;
- (2) The reasons for the issuance of the order;
- (3) The effective date of the order if other than the date the order is issued;

(4) The person to whom questions regarding the order are to be addressed; and

(5) Notice of the right to a preliminary hearing.

(e) Unless otherwise provided in the order, an emergency order shall become effective upon its service. Service of an emergency order may be made upon the owner of the facility, the director of the facility, or any other agent, employee, or person in charge of the facility at the time of the service of the order.

(f) A request for a preliminary hearing shall be made in writing within 48 hours from the time of service, excepting weekends. The request shall be made to the representative of the department designated in the order and may be made in person, by facsimile, by e-mail, or by any other means designated in the order.

(g) Upon receipt of a request for a preliminary hearing, the department shall immediately forward the request to the Office of State Administrative Hearings, which shall set and give notice of the date, time, and location of the preliminary hearing. The preliminary hearing shall be held as soon as possible after a request therefor but in no event later than 48 hours after such request, provided that a program may request that such hearing be held earlier and that in no event shall a hearing be held on a weekend or holiday.

(h) If a hearing is requested, the preliminary hearing shall consist of a review of all oral and written evidence introduced at the hearing and any arguments made. A recording shall be made of the hearing.

(i) The Office of State Administrative Hearings shall, where practicable, issue an immediate oral order and shall, in all instances, issue a written order within two business days after the close of the hearing.

(j) Pending final appeal of the validity of any emergency order issued as provided in this Code section, such emergency order shall remain in full effect until vacated or rescinded by the commissioner or the commissioner's designee.

(k) The department is not precluded from other actions permitted by other laws or regulations during the time an emergency order is in force. (Code 1981, § 20-1A-13, enacted by Ga. L. 2004, p. 645, § 1; Ga. L. 2005, p. 60, § 20/HB 95; Ga. L. 2011, p. 579, § 1/SB 185.)

**The 2011 amendment**, effective July 1, 2011, in subsection (a), added "or providing notice of intended emergency closure of an early care and education program" at the end of paragraph (a)(1); in paragraph (a)(3), substituted "Office of State Administrative Hearings" for "de-

partment", and inserted "or upon notice of intended emergency closure of a program"; in subsection (b), added the present paragraph (b)(1) designation; redesignated former paragraphs (b)(1) through (b)(3) as present subparagraphs (b)(1)(A) through (b)(1)(C), respectively; redesign-



nated former subsection (c) as present paragraph (b)(2) and inserted “or child-caring” in the fourth sentence; added subsection (c); rewrote subsection (f); deleted former subsection (g), which read: “If a request is made to appear in person at the preliminary hearing, the program shall provide the name and address of the person or persons, if any, who will be representing the program in the preliminary hearing.”; redesignated former subsections (h) through (l) as present subsections (g) through (k), respectively; in subsection (g), inserted “shall immediately forward the request to the Office of State Administrative Hearings, which” in the first sentence, and substituted “48 hours” for “72 hours” in the second sen-

tence; in subsection (h), in the first sentence, substituted “If a hearing” for “If a personal appearance” near the beginning, and substituted “all oral and written evidence introduced at the hearing and” for “the evidence in the record, any additional evidence introduced at the hearing, and” near the middle; and, in subsection (i), substituted “Office of State Administrative Hearings” for “department” near the beginning, and substituted “four business days” for “two business days” near the end.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2012, “Office of State Administrative Hearings” was substituted for “Office of Administrative Hearings” three times in paragraph (c)(2).

## 20-1A-14. Variances and waivers to regulatory requirements.

(a) The department upon application or petition may grant variances and waivers to specific rules and regulations which establish standards for early care and education programs regulated by the department as follows:

(1) The department may authorize departure from the literal requirements of a rule or regulation by granting a variance upon a showing by the applicant or petitioner that the particular rule or regulation that is the subject of the variance request should not be applied as written because strict application would cause undue hardship. The applicant or petitioner additionally must show that adequate standards affording protection of health, safety, and care exist and will be met in lieu of the exact requirements of the rule or regulation in question;

(2) The department may dispense entirely with the enforcement of a rule or regulation by granting a waiver upon a showing by the applicant or petitioner that the purpose of the rule or regulation is met through equivalent standards affording equivalent protection of health, safety, and care;

(3) The department may grant waivers and variances to allow experimentation and demonstration of new and innovative approaches to delivery of services upon a showing by the applicant or petitioner that the intended protections afforded by the rule or regulation which is the subject of the request are met and that the innovative approach has the potential to improve service delivery;

(4) Waivers or variances which affect an entire class of programs may only be approved by the board and shall be for a time certain, as

determined by the board. A notice of the proposed variance or waiver affecting an entire class of programs shall be made in accordance with the requirements for notice of rule making in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; or

(5) Variances or waivers which affect only one program in a class may be approved or denied by the department and shall be for a time certain, as determined by the department. The department shall maintain a record of such action and shall make this information available to the board and all other persons who request it.

(b) The department may exempt classes of programs from regulation when, in the department's judgment, regulation would not permit the purpose intended or the class of programs is subject to similar requirements under other rules and regulations. Such exemptions shall be provided in rules and regulations promulgated by the board. (Code 1981, § 20-1A-14, enacted by Ga. L. 2004, p. 645, § 1.)

**20-1A-15. "Inspection warrant" defined; procedure for issuance; evidence generated inadmissible in criminal proceedings.**

(a) As used in this chapter, the term "inspection warrant" means a warrant authorizing a search or inspection of private property where such a search or inspection is one that is necessary for the enforcement of any of the provisions of laws authorizing licensure, inspection, or regulation by the department.

(b) The commissioner or the commissioner's delegate, in addition to other procedures now or hereafter provided, may obtain an inspection warrant under the conditions specified in this Code section. Such warrant shall authorize the commissioner or the commissioner's agents to conduct a search or inspection of property, either with or without the consent of the person whose property is to be searched or inspected, if such search or inspection is one that is elsewhere authorized under the rules and regulations duly promulgated under this chapter or any provision of law which authorizes licensure, inspection, or regulation by the department.

(c) Inspection warrants shall be issued only by a judge of a court of record whose territorial jurisdiction encompasses the property to be inspected.

(d) The issuing judge shall issue the warrant when such judge is satisfied that the following conditions are met:

(1) The one seeking the warrant must establish under oath or affirmation that the property to be inspected is to be inspected as a part of a legally authorized program of inspection which includes that

property or that there is probable cause for believing that there is a condition, object, activity, or circumstance which legally justifies such an inspection of that property; and

(2) The issuing judge determines that the issuance of the warrant is authorized by this Code section.

(e) The inspection warrant shall be validly issued only if it meets the following requirements:

(1) The warrant is attached to the affidavit required to be made in order to obtain the warrant;

(2) The warrant describes, either directly or by reference to the affidavit, the property upon which the inspection is to occur and is sufficiently accurate that the executor of the warrant and the owner or possessor of the property can reasonably determine from it the property of which the warrant authorizes an inspection;

(3) The warrant indicates the conditions, objects, activities, or circumstances which the inspection is intended to check or reveal; and

(4) The warrant refers, in general terms, to the statutory or regulatory provisions sought to be enforced.

(f) No facts discovered or evidence obtained in an inspection conducted under authority of an inspection warrant issued pursuant to this chapter shall be competent as evidence in any criminal proceeding against any party. (Code 1981, § 20-1A-15, enacted by Ga. L. 2004, p. 645, § 1.)

#### **20-1A-16. Coordination of efforts between departments and agencies.**

It shall be the duty of all other state departments, agencies, officers, and employees to assure the most effective coordination and use of state resources, personnel, and facilities for the benefit of children and youths and to assist the department in effectuating the purposes of this chapter by making available to the department upon request of the board or commissioner and to the extent permissible by law the services, resources, personnel, and facilities of their respective departments and agencies. (Code 1981, § 20-1A-16, enacted by Ga. L. 2004, p. 645, § 1.)

#### **20-1A-17. Transfer of programs from Department of Education.**

The commissioner and the State School Superintendent, with the concurrence of the board for the department and the State Board of



Education, are authorized to transfer programs relating to early childhood education from the Department of Education to the department, as long as such programs are not expressly assigned to the Department of Education by statute. (Code 1981, § 20-1A-17, enacted by Ga. L. 2004, p. 645, § 1.)

### **20-1A-18. Information on influenza vaccine.**

(a) Each early care and education program shall, by September 1 of each year, provide to the parent or guardian of each child enrolled in the program educational information on the influenza vaccine. Such information shall include, but not be limited to:

(1) The causes and symptoms of influenza and the means by which it is spread;

(2) The risks associated with influenza;

(3) The availability, effectiveness, and known contraindications of the influenza vaccine; and

(4) Related recommendations issued by the federal Centers for Disease Control and Prevention, including the recommended ages at which children receive the influenza vaccine.

(b) The failure on the part of an early care and education program to comply with the provisions of this Code section shall not subject such program to any civil or criminal liability.

(c) Nothing in this Code section shall be construed to require any early care and education program to provide or pay for immunizations against influenza. (Code 1981, § 20-1A-18, enacted by Ga. L. 2012, p. 734, § 1/HB 845.)

**Effective date.** — This Code section became effective July 1, 2012.

## **ARTICLE 2**

### **BACKGROUND CHECKS**

### **20-1A-30. Definitions.**

As used in this article, the term:

(1) “Center” means a day-care center, group day-care home, family day-care home, or child care learning center which is required to be licensed or registered under Article 1 of this chapter.

(2) “Conviction” means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(3) "Crime" means any felony; a violation of Code Section 16-5-23, relating to simple battery, when the victim is a minor; a violation of Code Section 16-12-1, relating to contributing to the delinquency of a minor; a violation of Chapter 6 of Title 16, relating to sexual offenses; a violation of Code Section 16-4-1, relating to criminal attempt when the crime attempted is any of the crimes specified by this paragraph; or any other offenses committed in another jurisdiction which, if committed in this state, would be one of the enumerated crimes listed in this paragraph.

(4) "Criminal record" means:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge;

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; provided, however, that this division shall not apply to a violation of Chapter 13 of Title 16, relating to controlled substances, or any other offense committed in another jurisdiction which, if it were committed in this state, would be a violation of Chapter 13 of Title 16 if such violation or offense constituted only simple possession; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; provided, however, that this division shall not apply to a violation of Chapter 13 of Title 16, relating to controlled substances, or any other offense committed in another jurisdiction which, if it were committed in this state, would be a violation of Chapter 13 of Title 16 if such violation or offense constituted only simple possession; or

(C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(5) "Director" means the chief administrative or executive officer of a facility.

(6) "Emergency temporary employee" means an employee other than a director whose duties involve personal contact between that person and any child being cared for at the facility and who is hired on an expedited basis to avoid noncompliance with staffing standards for centers required by law, rule, or regulation.

(7) "Employee" means any person, other than a director, employed by a center to perform at any of the center's facilities any duties which involve personal contact between that person and any child being cared for at the facility and also includes any adult person who



resides at the facility or who, with or without compensation, performs duties for the center which involve personal contact between that person and any child being cared for by the center.

(8) "Employment history" means a record of where a person has worked for the past ten years.

(9) "Facility" means a center's real property at which children are received for care.

(10) "Fingerprint records check determination" means a satisfactory or unsatisfactory determination by the department based upon a records check comparison of GCIC information with fingerprints and other information in a records check application.

(11) "GCIC" means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(12) "GCIC information" means criminal history record information as defined in Code Section 35-3-30.

(13) "License" means the document issued by the department to authorize the center to which it is issued to operate a facility.

(14) "National fingerprint records check determination" means a satisfactory or unsatisfactory determination by the department in accordance with applicable law based upon a report from the Federal Bureau of Investigation after a search of bureau records and fingerprints.

(15) "Preliminary records check application" means an application for a preliminary records check determination on forms provided by the department.

(16) "Preliminary records check determination" means a satisfactory or unsatisfactory determination by the department based only upon a comparison of GCIC information with other than fingerprint information regarding the person upon whom the records check is being performed.

(17) "Records check application" means two sets of classifiable fingerprints, a records search fee to be established by the board by rule and regulation, payable in such form as the department may direct to cover the cost of a fingerprint records check under this article, and an affidavit by the applicant disclosing the nature and date of any arrest, charge, or conviction of the applicant for the violation of any law, except for motor vehicle parking violations, whether or not the violation occurred in this state, and such additional information as the department may require.

(18) "Satisfactory determination" means a written determination that a person for whom a records check was performed was found to have no criminal record.

(19) "State fingerprint records check determination" means a satisfactory or unsatisfactory determination by the department in accordance with applicable law based upon a records check comparison of GCIC information with fingerprints and other information in a records check application.

(20) "Unsatisfactory determination" means a written determination that a person for whom a records check was performed has a criminal record. (Code 1981, § 20-1A-30, enacted by Ga. L. 2004, p. 645, § 1.)

### **20-1A-31. Separate licensing and directors for facilities.**

(a) Each center shall be required to obtain a separate license for each facility and shall have a separate director for each facility.

(b) An applicant for a new license shall apply for a separate license for each new facility in this state owned or operated by that applicant and shall have a separate director for each such facility. (Code 1981, § 20-1A-31, enacted by Ga. L. 2004, p. 645, § 1.)

### **20-1A-32. Records check requirements for applicants; procedure.**

Accompanying any application for a new license for a facility, the applicant shall furnish to the department a records check application for the director and a satisfactory preliminary records check for each employee of such facility. In lieu of such records check applications, the applicant may submit evidence, satisfactory to the department, that within the immediately preceding 12 months the director received satisfactory state and national fingerprint records check determinations and each employee received a satisfactory preliminary records check determination, or that any employee other than the director whose preliminary records check revealed a criminal record of any kind has either subsequently received satisfactory state and national fingerprint records check determinations or has had the unsatisfactory determination reversed in accordance with Code Section 20-1A-43. The department may either perform preliminary records checks under agreement with GCIC or contract with GCIC and appropriate law enforcement agencies which have access to GCIC information to have those agencies perform for the department a preliminary records check for each preliminary records check application submitted thereto by the department. Either the department or the appropriate law enforcement agencies may charge reasonable fees for performing preliminary records checks. (Code 1981, § 20-1A-32, enacted by Ga. L. 2004, p. 645, § 1.)

**20-1A-33. Notification to applicant on records check; unsatisfactory results from records check.**

After being furnished the required records check application under Code Section 20-1A-32 the department shall notify in writing the license applicant as to each person for whom an application was received regarding whether the department's determination as to that person's state fingerprint records check was satisfactory or unsatisfactory. If the preliminary records check determination was satisfactory as to each employee of an applicant's facility and the state fingerprint records check was satisfactory as to the director, that applicant may be issued a license for that facility if the applicant otherwise qualifies for a license under Article 1 of this chapter. If the state or national fingerprint records check determination was unsatisfactory as to the director of an applicant's facility, the applicant shall designate another director for that facility after receiving notification of the determination and proceed under Code Section 20-1A-32 and this Code section to obtain state and national fingerprint records checks for that newly designated director. If the preliminary records check for any employee other than the director revealed a criminal record of any kind, such employee shall not be allowed to work in the center until he or she either has obtained satisfactory state and national fingerprint records check determinations or has had the unsatisfactory determination reversed in accordance with Code Section 20-1A-43. If the determination was unsatisfactory as to any employee of an applicant's facility, the applicant shall, after receiving notification of that determination, take such steps as are necessary so that such person is no longer an employee. Any employee other than the director who receives a satisfactory preliminary records check shall not be required to obtain a fingerprint records check unless such an employee has been designated as a director or as permitted by the provisions of subsection (c) of Code Section 20-1A-39. (Code 1981, § 20-1A-33, enacted by Ga. L. 2004, p. 645, § 1.)

**20-1A-34. Check of fingerprints on national level.**

The department shall transmit to GCIC both sets of fingerprints and the records search fee from each fingerprint records check application. Upon receipt thereof, GCIC shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its records and records to which it has access. Within ten days after receiving fingerprints acceptable to GCIC, the application, and fee, GCIC shall notify the department in writing of any derogatory finding, including but not limited to any criminal record, of the state fingerprint records check or if there is no such



finding. After a search of Federal Bureau of Investigation records and fingerprints and upon receipt of the bureau's report, the department shall make a national fingerprint records determination. (Code 1981, § 20-1A-34, enacted by Ga. L. 2004, p. 645, § 1.)

**20-1A-35. Notification to applicant following national fingerprint check.**

After receiving a Federal Bureau of Investigation report regarding a national fingerprint records check under Code Section 20-1A-34, the department shall make a determination based thereon and notify in writing the license applicant as to whether that records check was satisfactory or unsatisfactory. If the national fingerprint records check determination was unsatisfactory as to the director of an applicant's facility, after receiving notification of that determination, that applicant shall designate another director for such facility for which director the applicant has not received or made an unsatisfactory preliminary or fingerprint records check determination and proceed under the requirements of Code Sections 20-1A-32 through 20-1A-34 and this Code section to obtain state and national fingerprint records check determinations for the newly designated director. The director may begin working upon the receipt of a satisfactory state fingerprint records check determination pending the receipt of the national fingerprint records check determination from the department. The department may revoke the license of that facility if the facility fails to comply with the requirements of this Code section and Code Section 20-1A-33 to receive satisfactory state and national fingerprint determinations on the director or to comply with Code Section 20-1A-33 regarding employees other than the director. (Code 1981, § 20-1A-35, enacted by Ga. L. 2004, p. 645, § 1.)

**20-1A-36. Certain offenders prohibited as employees of facilities.**

No facility operated as an early care and education program or similar facility or any operator of such a facility shall employ any person who has been convicted of or who has entered a plea of guilty or nolo contendere to any offense specified in Code Section 16-12-1.1 or allow any such person to reside at or be domiciled at such facility in violation of Code Section 16-12-1.1. The department shall either deny the issuance of or revoke the license, commission, or registration of any such facility violating the provisions of this Code section. The powers and duties set forth in this Code section are cumulative and not intended to limit the powers and duties set forth throughout this article. (Code 1981, § 20-1A-36, enacted by Ga. L. 2004, p. 645, § 1.)



**20-1A-37. Requirements of individuals residing in family day-care home; alternatives to criminal records check determination.**

(a) Notwithstanding any other provision of this article, an individual who resides in a family day-care home, as defined by Code Section 20-1A-2, shall not be required to provide fingerprints for routine fingerprints records checks if the operator of the family day-care home provides the department with an affidavit stating that such individual is not present in the home at the same time as the children who are received for pay for supervision and care. However, all persons residing in a family day-care home are required to obtain satisfactory preliminary records checks and submit them to the department.

(b) As an alternative to the requirements set out in this article pertaining to obtaining preliminary criminal records check determinations through the department for employees of centers and adults residing in a family day-care home, but not including directors of centers, centers may obtain GCIC information through local law enforcement agencies. The center shall be responsible for reviewing the GCIC information obtained for the potential employee or adult residing in the family day-care home and making a written determination that the individual does not have a criminal record as defined in this article. This written determination, together with all supporting documentation received from any law enforcement agency, must be maintained in the center's file and available for inspection by the department. This satisfactory determination must be made before the employee begins any duties for the center. However, where there is an urgent need for an emergency temporary employee to work at a center's facility in order to avoid immediate noncompliance with staffing requirements, such center may utilize the applicant as an emergency temporary employee after applying for the preliminary records check through the local law enforcement agency and completing the affidavit. In such emergency situations, the director of the center must complete an affidavit, with all supporting documentation attached thereto, stating that the GCIC information has been requested through an identified local law enforcement agency and that the results were not immediately available to the center prior to assigning the employee to work with children at the center's facility in order to avoid immediate noncompliance with staffing ratios. The affidavit with supporting documentation must be maintained in the center's file on the individual and available to the department for inspection. The director shall review the GCIC information upon receipt, but in no case shall an emergency temporary employee be permitted to continue working for more than three days without having a satisfactory determination made by the director and entered into the center's file on the employee with all supporting

documentation. The department shall promulgate rules and regulations limiting the extent to which centers are authorized to use emergency temporary employees in accordance with this subsection. Employees, emergency temporary employees, and other adults required to have records checks who are utilized by centers are subject to all other requirements set forth in this article. Where the department has reason to question the validity of the GCIC information or the satisfactory determination made by the center, the department may require the employee, emergency temporary employee, or other adult to submit a preliminary criminal records check application through the department together with appropriate fees. (Code 1981, § 20-1A-37, enacted by Ga. L. 2004, p. 645, § 1.)

**20-1A-38. Change of directors; fingerprinting requirements and background check; unsatisfactory results from check.**

(a) If the director of a facility which has been issued a license ceases to be the director of that facility, the licensee shall thereupon designate a new director. After such change, the licensee of that facility shall notify the department of such change and of any additional information the department may require regarding the newly designated director of that facility. Such information shall include but not be limited to any information the licensee may have regarding preliminary or any fingerprint records check determinations regarding that director. After receiving a change of director notification, the department shall make a written determination from the information furnished with such notification and the department's own records as to whether satisfactory or unsatisfactory preliminary or state and national fingerprint records check determinations have ever been made for the newly designated director. If the department determines that such director within 12 months prior thereto has had satisfactory state and national fingerprint records check determinations, such determinations shall be deemed to be satisfactory state and national fingerprint records check determinations as to that director. The license of that facility shall not be adversely affected by that change in director, and the licensee shall be so notified.

(b) If the department determines under subsection (a) of this Code section that there has ever been an unsatisfactory preliminary or state or national fingerprint records check determination of the newly designated director which has not been legally reversed, the center and that director shall be so notified. The license for that director's facility shall be indefinitely suspended or revoked unless the center designates another director for whom it has not received or made an unsatisfactory preliminary or state or national fingerprint records check determination and proceeds pursuant to the provisions of this Code section relating to a change of director.



(c) If the department determines under subsection (a) of this Code section that there have been no state and national fingerprint records check determinations regarding the newly designated director within the immediately preceding 12 months, the department shall so notify the center. The center shall furnish to the department the fingerprint records check application of the newly designated director after the date the notification is sent by the department or the license of that facility shall be indefinitely suspended or revoked. If that fingerprint records check application is so received, unless the department has within the immediately preceding 12 months made a satisfactory state fingerprint records check determination regarding the newly designated director, the department shall perform a state fingerprint records check determination of the newly designated director, and the applicant and that director shall be so notified. If that determination is unsatisfactory, the provisions of subsection (b) of this Code section regarding procedures after notification shall apply. If that determination is satisfactory, the department shall perform a national fingerprint records check determination for that director as provided in Code Sections 20-1A-34 and 20-1A-35. The director may begin working upon the receipt of a satisfactory state fingerprint records check determination pending the receipt of the national fingerprint records check determination from the department. If that determination is satisfactory, the center and director for whom the determination was made shall be so notified after the department makes its determination, and the license for the facility at which that person is the newly designated director shall not be adversely affected by that change of director. If that determination is unsatisfactory, the provisions of subsection (b) of this Code section shall apply. (Code 1981, § 20-1A-38, enacted by Ga. L. 2004, p. 645, § 1.)

**20-1A-39. Preliminary records check of employees; other requirements; director's liability for hiring ineligible employee.**

(a) Before a person may become an employee other than a director of any center after that center has received a license, that center shall require that person to obtain a satisfactory preliminary records check. The center shall maintain documentation in the employee's personnel file, which is available to the department upon request, which reflects that a satisfactory preliminary criminal records check was received before the employee began working with children. If the preliminary records check for any potential employee other than the director reveals a criminal record of any kind, such potential employee shall not be allowed to begin working until either such potential employee has obtained satisfactory state and national fingerprint records check determinations or has had the unsatisfactory preliminary or fingerprint

records check determination reversed in accordance with Code Section 20-1A-43. If either the preliminary or state or national fingerprint records determination is unsatisfactory, the center shall, after receiving notification of the determination, take such steps as are necessary so that such person is no longer an employee. Any potential employee other than the director who receives a satisfactory preliminary records check determination shall not be required to obtain a fingerprint records check determination except as permitted in accordance with subsection (c) of this Code section.

(b) A license is subject to suspension or revocation and the department may refuse to issue a license if a director or employee does not undergo the records and fingerprint checks applicable to that director or employee and receive satisfactory determinations.

(c) After the issuance of a license, the department may require a fingerprint records check on any director or employee to confirm identification for records search purposes, when the department has reason to believe the employee has a criminal record that renders the employee ineligible to have contact with children in the center, or during the course of a child abuse investigation involving the director or employee.

(d) No center may hire any person as an employee unless there is on file in the center an employment history and a satisfactory preliminary records check or, if the preliminary records check determination revealed a criminal record of any kind as to such person, either satisfactory state and satisfactory national records check determinations for that person or proof that an unsatisfactory determination has been reversed in accordance with Code Section 20-1A-43.

(e) A director of a facility having an employee whom that director knows or should reasonably know to have a criminal record that renders the employee ineligible to have contact with children in the center shall be guilty of a misdemeanor. (Code 1981, § 20-1A-39, enacted by Ga. L. 2004, p. 645, § 1.)

#### **20-1A-40. Cooperation with GCIC and other law enforcement agencies; fees; penalty for misuse of information.**

(a) GCIC and law enforcement agencies which have access to GCIC information shall cooperate with the department in performing preliminary and fingerprint records checks required under this article and shall provide such information so required for such records checks notwithstanding any other law to the contrary and may charge reasonable fees therefor.

(b) Any person who knowingly and under false pretenses requests, obtains, or attempts to obtain GCIC information otherwise authorized



to be obtained pursuant to this article, or who knowingly communicates or attempts to communicate such information obtained pursuant to this article to any person or entity except in accordance with this article, or who knowingly uses or attempts to use such information obtained pursuant to this article for any purpose other than as authorized by this article shall be fined not more than \$5,000.00, imprisoned for not more than two years, or both. (Code 1981, § 20-1A-40, enacted by Ga. L. 2004, p. 645, § 1.)

**20-1A-41. Liability for information or determinations made based upon records check.**

(a) Neither GCIC, the department, any law enforcement agency, nor the employees of any such entities shall be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this article.

(b) A center, its director, and its employees shall have no liability for defamation, invasion of privacy, or any other claim based upon good faith action thereby pursuant to the requirements of this article. (Code 1981, § 20-1A-41, enacted by Ga. L. 2004, p. 645, § 1.)

**20-1A-42. Construction with Article 1.**

The requirements of this article are supplemental to any requirements for a license imposed by Article 1 of this chapter. (Code 1981, § 20-1A-42, enacted by Ga. L. 2004, p. 645, § 1.)

**20-1A-43. Contested case procedure following rejection or other suspension of license or application.**

A determination by the department regarding preliminary or fingerprint records checks under this article, or any action by the department revoking, suspending, or refusing to grant or renew a license based upon such determination, shall constitute a contested case for purposes of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except that any hearing required to be held pursuant thereto may be held reasonably expeditiously after such determination or action by the department. It is expressly provided that upon motion from any party, the hearing officer may, in his or her discretion, consider matters in mitigation of any conviction, provided that the hearing officer examines the circumstances of the case and makes an independent finding that no physical harm was done to a victim and also examines the character and employment history since the conviction and determines that there is no propensity for cruel behavior or behavior involving moral turpi-

tude on the part of the person making a motion for an exception to sanctions normally imposed. If the hearing officer deems a hearing to be appropriate, he or she will also notify at least 30 days prior to such hearing the office of the prosecuting attorney who initiated the prosecution of the case in question in order to allow the prosecutor to object to a possible determination that the conviction would not be a bar for the grant or continuation of a license or employment as contemplated within this chapter. If objections are made, the hearing officer will take such objections into consideration in considering the case. (Code 1981, § 20-1A-43, enacted by Ga. L. 2004, p. 645, § 1.)

#### **20-1A-44. Regulatory authority.**

The board is authorized to provide by regulation for the administration of this article. (Code 1981, § 20-1A-44, enacted by Ga. L. 2004, p. 645, § 1.)

### **ARTICLE 3**

#### **CHILD CARE COUNCIL**

**Editor's notes.** — Ga. L. 1993, p. 1063, § 2, not codified by the General Assembly, amends Ga. L. 1991, p. 1648, § 3 to read: "The Georgia Child Care Council shall continue in existence so long as federal child care funds are available to the State of Georgia for support of such council." As

of June, 2012, federal child care funds were not available to the State of Georgia for support of such council.

Ga. L. 2004, p. 645, § 3, effective October 1, 2004, designated these provisions as Article 3.

#### **20-1A-60. Definitions.**

As used in this article, the term:

(1) "Council" means the Georgia Child Care Council created pursuant to Code Section 20-1A-61.

(2) "Department" means the Department of Early Care and Learning.

(3) "Federal act" means the Child Care and Development Block Grant Act of 1990, pursuant to amendments to Chapter 8 of subtitle A of Title IV of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35).

(4) "Lead agency" means the Department of Human Services or any state agency designated by the Governor pursuant to the federal act and applicable regulations. (Code 1981, § 49-5-240, enacted by Ga. L. 1991, p. 1648, § 1; Ga. L. 2004, p. 645, §§ 2, 3; Ga. L. 2009, p. 453, § 2-2/HB 228.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1991, “act” was substituted for “Act” near the beginning of paragraph (2) (now paragraph (3)).

**Editor’s notes.** — For information on the continued existence of the Georgia Child Care Council, see the Editor’s notes at the beginning of this article.

**U.S. Code.** — The Child Care and Development Block Grant Act of 1990, as amended by the Omnibus Budget Reconciliation Act of 1981, referred to in paragraph (3), is codified at Title 42 of the United States Code.

### **20-1A-61. Child Care Council — Members; length of terms; appointments; removal of members.**

(a) There is created the Georgia Child Care Council which shall consist of 20 members. Fourteen of those members shall be voting members appointed by the Governor and confirmed by the Senate, and two shall be voting members appointed as provided in paragraph (11) of this subsection. The 16 voting members shall be appointed as follows:

(1) Two members shall be representatives of local or state chambers of commerce;

(2) One member shall be a representative of the licensed or commissioned for profit child care businesses in the state;

(3) One member shall be a representative of the licensed or commissioned not for profit child care businesses in the state;

(4) One member shall be a representative from a public Pre-K provider;

(5) Four members shall be consumers of child care services or persons whose children are regularly placed in child care but who have no other business connection with any child care facility or business and at least one of them shall represent the interests of children with special needs and one shall represent the interests of school age children;

(6) One member shall represent registered family day-care homes;

(7) One member shall represent licensed or commissioned church or synagogue day-care centers;

(8) One member shall be an expert or have special academic or research responsibilities in early childhood development;

(9) One member shall represent a child care resource and referral agency;

(10) One member shall represent a Head Start organization; and

(11) Two members shall represent the general public and shall be appointed by the President of the Senate and the Speaker of the House of Representatives.



At the expiration of the original three-year terms of office of members of the council, successors to such members shall be appointed as follows: seven of the members appointed by the Governor shall serve for initial terms of one year and seven of such Governor appointed members shall serve for initial terms of three years; thereafter all members appointed by the Governor shall serve for terms of three years. Successors to those members appointed by the Speaker of the House of Representatives and the President of the Senate shall each serve for terms of three years. The remaining four nonvoting members shall be the State School Superintendent, the Commissioner of Labor, the commissioner of human services, and the commissioner of economic development, or the designee of the State School Superintendent, the Commissioner of Labor, the commissioner of human services, and the commissioner of economic development, all of whom shall be ex officio members.

(b) The ex officio members of the council shall serve while holding their state offices.

(c) Vacancies in the office of any appointive member of the council shall be filled for the remainder of the unexpired term by appointment by the Governor in the same manner as the appointment to the position on the council which becomes vacant, and the appointment shall be submitted to the Senate for confirmation at the next regular session of the General Assembly.

(d) The Governor may remove any appointive member of the council for failure to attend meetings, neglect of duty, or incompetence.

(e) Any appointive member of the council who, during such person's term of office, ceases to meet the qualifications for the original appointment or does not attend three or more successive meetings of the council shall forfeit such person's membership on the council.

(f) Each member of the council shall take an oath of office before the Governor that he or she will faithfully perform the duties of office. (Code 1981, § 49-5-241, enacted by Ga. L. 1991, p. 1648, § 1; Ga. L. 1993, p. 1063, § 1; Ga. L. 1994, p. 97, § 49; Code Section 20-1A-61, as redesignated by Ga. L. 2004, p. 645, §§ 2, 3; Ga. L. 2004, p. 690, § 23; Ga. L. 2005, p. 60, § 20/HB 95; Ga. L. 2009, p. 453, § 2-4/HB 228.)

**Editor's notes.** — For information on the continued existence of the Georgia Child Care Council, see the Editor's notes at the beginning of this article.

## **20-1A-62. Appointment of chairperson and vice chairperson; meetings; compensation of members of council.**

(a) The Governor shall annually appoint a chairperson and vice chairperson of the council to serve for one-year terms.



(b) The council shall hold regular meetings at least once every calendar quarter and may not hold more than six regular or special meetings during any calendar year. A special meeting may be called by the chairperson, the commissioner, or a majority of the members of the council. The council shall meet at such times and at such designated places in the state as it may determine. In addition to the notice of meetings required under Chapter 14 of Title 50, the council shall also provide written notice to the commissioner no later than 24 hours prior to the meeting.

(c) Nine members of the council shall constitute a quorum.

(d) The appointive members of the council shall receive the same allowances authorized for legislative members of interim legislative committees for each day of actual attendance at official meetings of the council. Ex officio members of the council shall receive no additional compensation for their services on the council but shall be reimbursed for expenses incurred by them in their performance of their duties as members of the council in the same manner as state employees are reimbursed for expenses. (Code 1981, § 49-5-242, enacted by Ga. L. 1991, p. 1648, § 1; Ga. L. 2004, p. 645, §§ 2, 3.)

**Editor's notes.** — For information on the continued existence of the Georgia Child Care Council, see the Editor's notes at the beginning of this article.

### **20-1A-63. Obligations of council.**

The council shall advise and make recommendations to the board and commissioner on the following:

- (1) Policy matters relating to early care and education programs;
- (2) Planning and coordination of child care programs at the state and local levels;
- (3) Measures to improve the quality, availability, and affordability of child care in this state;
- (4) Issues relating to the annual Georgia report on child care; and
- (5) General policy matters relating to functions performed or services provided by the department. (Code 1981, § 49-5-243, enacted by Ga. L. 1991, p. 1648, § 1; Ga. L. 2004, p. 645, §§ 2, 3.)

**Editor's notes.** — For information on the continued existence of the Georgia Child Care Council, see the Editor's notes at the beginning of this article.

### **20-1A-64. Functions and authority of lead agency and department.**

- (a) The lead agency shall:

(1) Provide to the department, under contract, an amount not less than the minimum percentage of the grant to the State of Georgia under the federal act, which must be expended for activities that are designed to provide comprehensive consumer education to parents and the public, activities that increase parental choice, and activities designed to improve the quality, availability, and affordability of child care. In addition to this minimum percentage, the lead agency shall also provide the amount of any additional funds, which exist on October 1, 2004, or which may exist in the future, which are required to be spent on activities relating to improving the quality of child care, including care for school age children;

(2) In conjunction with the department, provide a mechanism for the planning and coordination of child care programs at the state and local levels;

(3) Recommend to the department measures to improve the quality, availability, and affordability of child care in this state;

(4) In conjunction with the department, inventory and monitor the disbursement and make recommendations as to the coordination of the disbursement of all state and federal funding streams that impact the supply, quality, and affordability of child care;

(5) In conjunction with the department, develop an annual Georgia child care plan which includes all identified revenue sources and, at a minimum, the requirements indicated in the federal act;

(6) Hold one or more public hearings, with state-wide publication of the notice of such hearings 30 days before the date of each hearing, to provide the public with an opportunity to comment on the provision of child care services under the annual Georgia child care plan, as required by the federal act;

(7) Develop reports that meet, at a minimum, the reporting requirements of the federal act;

(8) In conjunction with the department, recommend to the Governor and to the General Assembly policies, legislation, and funding that will promote the work of the lead agency and department and the realization of the Georgia child care plan to promote quality, affordable, and accessible child care for Georgia's children; and

(9) Develop a plan for application and distribution, including any necessary requests for proposals, in accordance with the Georgia child care plan, for federal block grant funds available to Georgia under the federal act.

(b) The department shall, in accordance with the policies, rules, and regulations promulgated by the board:

(1) In conjunction with the lead agency, provide a mechanism for the planning and coordination of child care programs at the state and local levels;

(2) Plan and implement activities that are designed to provide comprehensive consumer education to parents and the public, activities that increase parental choice, activities designed to improve the quality, availability, and affordability of child care, and other activities which meet the requirements of the federal act;

(3) Recommend to the lead agency measures to improve the quality, availability, and affordability of child care in this state;

(4) In conjunction with the lead agency, inventory and monitor the disbursement and make recommendations as to the coordination of the disbursement of all state and federal funding streams that impact the supply, quality, and affordability of child care funds expended by the department;

(5) Develop an annual Georgia report on child care, reporting child care statistics, and, in conjunction with the lead agency, an evaluation of the state planning process related to quality initiatives;

(6) Serve as the state clearing-house for information on child care resources and statistics by working with the child care resource and referral agencies;

(7) Provide child care information to corporations and businesses seeking to locate in Georgia;

(8) Promote public-private sector collaboration for child care;

(9) Recommend to the Governor and to the General Assembly policies, legislation, and funding that will promote the work of the department and the realization of the Georgia child care plan and to promote quality, affordable, and accessible child care for Georgia's children;

(10) Promote consumer education to parents to help in the selection of child care, including the expansion of the child care resource and referral agencies; and

(11) Develop a plan for application and distribution, including any necessary requests for proposals, in accordance with the Georgia child care plan, for federal block grant funds available to Georgia under the federal act. (Code 1981, § 49-5-244, enacted by Ga. L. 1991, p. 1648, § 1; Ga. L. 1994, p. 97, § 49; Ga. L. 2004, p. 645, §§ 2, 3; Ga. L. 2005, p. 60, § 20/HB 95.)



CHAPTER 2

ELEMENTARY AND SECONDARY EDUCATION

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| Sec.       |   |
| 20-2-2084. | (For effective date, see note)<br>State charter school requirements.  |
| 20-2-2085. | (For effective date, see note)<br>Petitions by existing charter schools.  |
| 20-2-2086. | (For effective date, see note)<br>Information to parents.   |
| 20-2-2087. | (For effective date, see note)<br>Annual report of chairperson.   |
| 20-2-2088. | (For effective date, see note)<br>Debts of non-renewed or terminated charter schools.   |
| 20-2-2089. | (For effective date, see note)<br>Funding for state charter schools.  |
| 20-2-2090. | (For effective date, see note)<br>Collaborative efforts on matters related to authorization of state charter schools; administration. |
| 20-2-2091. | (For effective date, see note)<br>Rules and regulations for implementation of article.  |

Article 31B

Charter School Capital Finance

|              |  |
|--------------|--|
| 20-2-2095.   | Short title.   |
| 20-2-2095.1. | Definitions.   |
| 20-2-2095.2. | Grant program for qualified charter school contributions.                            |
| 20-2-2095.3. | Date certain for matching funds.   |
| 20-2-2095.4. | Adoption of guidelines and standards for construction of charter schools; reporting. |
| 20-2-2095.5. | Promulgation of rules and regulations.   |

Article 32

High School Athletics Overview Committee

20-2-2100 through 20-2-2105 [Repealed].

| Article 33                                     |  |
|--|--|
| Scholarship Program for Special Needs Students |  |
| Sec.   |  |
| 20-2-2110.                                     | Short title.   |
| 20-2-2111.                                     | Legislative findings; purpose.   |
| 20-2-2112.                                     | Definitions.   |
| 20-2-2113.                                     | Annual notification of options available to parents of special needs students.   |
| 20-2-2114.                                     | Qualifications for scholarship; financial responsibility; state-wide assessments; exception; compliance.   |
| 20-2-2115.                                     | Eligibility requirements for schools participating in scholarship program; application of participating school.  |
| 20-2-2116.                                     | Amount of scholarship; method of payments.   |
| 20-2-2117.                                     | Adoption and promulgation of rules; immunity from liability for scholarship decisions; schools may be barred from program participation for certain actions. |
| 20-2-2118.                                     | Annual report.   |

Article 34

Intradistrict Transfers

|            |   |
|------------|---|
| 20-2-2130. | Definitions.  |
| 20-2-2131. | Enrollment of students in school to which not originally assigned; procedure; annual notification; exception. |

Article 35

Education of Military Dependents

20-2-2140 through 20-2-2180 [Repealed].

**Cross references.** — Property taxation for school purposes generally, § 48-5-400 et seq. Duty of Department of Audits and Accounts to audit books and accounts of school systems, § 50-6-6.

**Law reviews.** — For note on 1991 amendments to this chapter, see 8 Ga. St. U. L. Rev. 66 (1992).



## RESEARCH REFERENCES

**ALR.** — Absence from or inability to attend school or college as affecting liability for or right to recover payments for tuition or board, 20 ALR4th 303.

Circumstances warranting judicial de-

termination or declaration of unitary status with regard to schools operating under court-ordered or court-supervised desegregation plans and the effect of such declarations, 94 ALR Fed. 667.

## ARTICLE 1

## STATE BOARD OF EDUCATION

**Cross references.** — State Board of Education generally, Ga. Const. 1983, Art. VIII, Sec. II, Para. I. Leave to appeal,

Rules of the Court of Appeals of the State of Georgia, Rule 31.

## JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1432 et seq., which was subsequently repealed but was succeeded by provisions in this article, are included in the annotations for this article.

**Only conflicting existing law repealed by 1919 provisions.** — Only that part of the existing law which was in conflict with certain provisions enacted in 1919 was repealed by Ga. L. 1919, p. 288. *Orr v. Riley*, 160 Ga. 480, 128 S.E. 669 (1925) (decided under former Code 1910, § 1432 et seq.).

**Testimony on fiscal affairs of board of education.** — County school superintendent acts as the chief fiscal officer of the board of education; in this capacity the superintendent qualifies to testify concerning the fiscal affairs of the board, and there is no error in the admission of testimony by the county school superintendent outlining the expenditure required of the board of education under the Quality Basic Education Act, O.C.G.A. § 20-2-130 et seq. *Hicks v. Arnall*, 258 Ga. 296, 368 S.E.2d 733 (1988).

## OPINIONS OF THE ATTORNEY GENERAL

**Board of education is not liable for accidental injuries to students.** 1962 Op. Att'y Gen. p. 175.

**Board cannot establish quorum less than majority of membership.** —

State Board of Education may not legally establish a quorum for the transaction of business which is less than a majority of the board's membership. 1967 Op. Att'y Gen. No. 67-292.

## RESEARCH REFERENCES

**ALR.** — Transportation of school pupils at expense of public, 63 ALR 413; 118 ALR 806; 146 ALR 625.

Power and duty of school authorities to maintain kindergartens or specialized departments, 70 ALR 1313.

Status of teacher as an officer or employee, 75 ALR 1352.

Power of school authorities to transfer

teacher from one school or district to another, 103 ALR 1382.

Right of student to hearing on charges before suspension or expulsion from educational institution, 58 ALR2d 903.

Libel and slander: Privileged nature of statements or utterances by member of school board in course of official proceedings, 85 ALR3d 1137.

### 20-2-1. Board created; appointment of members; powers.

(a) The State Board of Education is created. The state board shall be composed of one member from each congressional district in this state, who shall be appointed by the Governor by and with the advice and consent of the Senate. The Governor shall not be a member of the state board. The state board provided for by this article shall have the powers and duties provided by law for the state board on January 25, 1943, and such as may be thereafter provided and shall be subject to all provisions of law with respect to the state board not inconsistent with this article.

(b) Except as provided in this article, the state board shall also have all the powers conferred by law upon the former State Board of Education abolished by Ga. L. 1937, p. 864, and shall perform all the duties required by law of such former state board as constituted on July 1, 1937. (Ga. L. 1919, p. 288, § 9; Code 1933, § 32-401; Ga. L. 1937, p. 864, §§ 1, 4; Ga. L. 1941, p. 568, § 1; Ga. L. 1943, p. 142, §§ 1, 2; Ga. L. 1943, p. 636, §§ 2, 3, 6; Ga. L. 1972, p. 1015, § 1001; Ga. L. 1996, p. 6, § 20.)

## JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1551, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Under the 1876 Constitution, the legislature was empowered to create court** or courts which would have jurisdiction of all controversies arising in the administration of the common school system. Board of Educ. v. Board of Educ., 173 Ga. 203, 159 S.E. 712 (1931).

**Judgment of the State Board of Education is the judgment of a tribunal** which can properly be held to be a court

whose final adjudications stand upon a like footing with other courts from whose judgment there is no appeal. Board of Educ. v. Board of Educ., 173 Ga. 203, 159 S.E. 712 (1931).

**Court will take judicial cognizance of rules and regulations issued for the supervision of schools.** Board of Educ. v. Bacon, 22 Ga. App. 72, 95 S.E. 753, cert. denied, 22 Ga. App. 803 (1918) (decided under former Code 1910, § 1551(12)).

**Cited** in Cook v. Davis, 178 F.2d 595 (5th Cir. 1949); Sheffield v. State Sch. Bldg. Auth., 208 Ga. 575, 68 S.E.2d 590 (1952).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 66.

**Am. Jur. Proof of Facts.** — 22 Am. Jur. Proof of Facts, Schools, § 2.

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 98, 99.

**ALR.** — Validity, construction, and ap-

plication of statutes or regulations, concerning recreational or social activities of pupils of public schools, 134 ALR 1274.

Regulations as to fraternities and similar associations connected with educational institution, 10 ALR3d 389.

Applicability and application of § 2 of

Voting Rights Act of 1965 (42 USCS § 1973) to members of school board, 105 ALR Fed. 254.

### 20-2-2. Terms of office of members.

The first State Board of Education appointed under this article shall hold office as follows: two for three years; four for five years; and four for seven years. All of such terms shall date from January 1, 1943. The Governor in making the appointments shall designate the holders of the respective terms. Successors to persons so appointed shall hold terms of office of seven years from the expiration of the previous term. All members of the state board appointed for a first or succeeding full term shall hold office until their successors are appointed and have qualified. Any appointment of a member of the state board for a full term made when the Senate is not in session shall be effective until the appointment is acted on by the Senate. (Ga. L. 1919, p. 288, § 9; Code 1933, § 32-401; Ga. L. 1937, p. 864, § 1; Ga. L. 1943, p. 636, §§ 4, 7.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 49 et seq., 76.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 100.

### 20-2-3. Vacancies on board.

In case of a vacancy on the State Board of Education by death, resignation, removal, or from any cause other than the expiration of such member's term of office, such vacancy shall be filled in the manner prescribed by Article VIII, Section II, Paragraph I of the Constitution. (Ga. L. 1919, p. 288, § 9; Code 1933, § 32-401; Ga. L. 1937, p. 864, § 1; Ga. L. 1943, p. 636, §§ 5, 8; Ga. L. 1983, p. 495, § 1.)

#### JUDICIAL DECISIONS

**Cited** in *Guy v. Nelson*, 202 Ga. 728, 44 S.E.2d 775 (1947).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 67.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 100.

### 20-2-4. Qualifications and disqualifications of members.

The members of the State Board of Education shall be citizens of this state who have resided in Georgia continuously for at least five years preceding their appointment. No person employed in a professional capacity by a private or public educational institution or by the



Department of Education shall be eligible for appointment or to serve on the state board. No person who is or has been connected with or employed by a schoolbook publishing concern shall be eligible for membership on the state board and, if any person shall be so connected or employed after becoming a member of the state board, his place shall immediately become vacant. (Ga. L. 1919, p. 288, § 9; Code 1933, § 32-401; Ga. L. 1937, p. 864, § 1.)

### JUDICIAL DECISIONS

**Cited** in *Keever v. Board of Educ.*, 188 Ga. 299, 3 S.E.2d 886 (1939); *Davis v. Haddock*, 191 Ga. 639, 13 S.E.2d 657 (1941); *Cook v. Davis*, 178 F.2d 595 (5th Cir. 1949); *Irwin v. Crawford*, 210 Ga. 222, 78 S.E.2d 609 (1953).

### OPINIONS OF THE ATTORNEY GENERAL

**"Professional" construed.** — Word "professional" within the context of this section refers to educational, rather than to legal, capacity. 1971 Op. Att'y Gen. No. U71-124 (see O.C.G.A. § 20-2-4).

**Fee from local board did not disqualify attorney from state board.** —

Receipt by an attorney at law under a legal partnership agreement of a prorated share of a fee for legal services furnished by the partner to a local board of education does not disqualify the attorney from appointment to the State Board of Education. 1971 Op. Att'y Gen. No. U71-124.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 68, 69.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 101.

### 20-2-5. Oaths of members; board meetings; chairperson.

The members of the State Board of Education shall take an oath of office for the faithful performance of their duties and the oath of allegiance to the federal and state Constitutions. The state board shall meet quarterly in regular session at such time as it may by regulation provide and may hold additional meetings at the call of the chairperson, provided that upon the written request of a majority of the members of the state board, the State School Superintendent shall call a meeting at any time. (Ga. L. 1919, p. 288, § 10; Code 1933, § 32-402; Ga. L. 1937, p. 864, § 1; Ga. L. 2000, p. 618, § 3; Ga. L. 2012, p. 358, § 1/HB 706.)

**The 2012 amendment**, effective July 1, 2012, deleted the former second sentence, which read: "They shall meet at the state capital in the Department of Education or at such place in the capital as may be designated by the Governor for that purpose."

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

## JUDICIAL DECISIONS

**Cited** in *Guy v. Nelson*, 202 Ga. 728, 44 S.E.2d 775 (1947); *Cook v. Davis*, 178 F.2d 595 (5th Cir. 1949).

## OPINIONS OF THE ATTORNEY GENERAL

**State board cannot establish quorum less than majority.** — State Board of Education may not legally establish a quorum for the transaction of business

which is less than a majority of the board's membership. 1967 Op. Att'y Gen. No. 67-292.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 74, 75, 167.

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 152, 200 et seq.

**ALR.** — Libel and slander: privileged nature of statements or utterances by member of school board in course of official proceedings, 85 ALR3d 1137.

**20-2-5.1. Annual public hearings in congressional district from which each State Board of Education member is appointed.**

(a) Each member of the State Board of Education shall hold one or more public hearings annually during the regular school calendar year in the respective congressional district from which the member was appointed. The purpose of the public hearing shall be to hear testimony from interested citizens and educators within the congressional district regarding the performance and problems of public education within the congressional district. The public hearing will be held in an appropriate public building located within the respective congressional district. Each board member shall attempt to hold the public hearings at locations throughout such member's respective congressional district. The public hearing will begin at 7:00 P.M. if held on Monday through Friday or at 10:00 A.M. if held on Saturday. No public hearing required by this Code section shall be held on Sunday.

(b) A member of the State Board of Education holding a public hearing required by this Code section shall:

(1) Cause a notice of the date, time, place, and purpose of the public hearing to be published at least once during each of two consecutive weeks immediately preceding the week during which the hearing is held, which notice shall be published in the official legal organ of each county wholly or partially within the congressional district unless there is any other newspaper having a general paid circulation in said county which exceeds that of the official organ, in which event the notice shall be published in any such other newspaper;

(2) Issue a press release to the print and broadcast media serving the congressional district announcing the date, time, place, and purpose of the public hearing; and

(3) Take such other action as may be necessary to bring the public hearing to the attention of the public and to encourage public attendance at and participation in the public hearing.

(c) A member of the State Board of Education shall constitute a committee of one for the purpose of holding a public hearing required by this Code section and, in connection therewith, shall be entitled to receive the per diem and expenses provided for by Code Section 20-2-9.

(d) The costs incurred in holding public hearings required by this Code section shall come from funds appropriated or available to the State Department of Education. (Code 1981, § 20-2-5.1, enacted by Ga. L. 1989, p. 678, § 1; Ga. L. 1993, p. 353, § 1.)

## **20-2-5.2. Elections of chairperson and other officers; term and duties of chairperson.**

The State Board of Education shall elect a chairperson and such other officers it may deem appropriate. The term of the chairperson shall be fixed by the state board. The chairperson shall preside at meetings of the state board, set the agenda for the state board, and perform such other duties as required by the state board. (Code 1981, § 20-2-5.2, enacted by Ga. L. 2000, p. 618, § 4; Ga. L. 2012, p. 358, § 2/HB 706.)

**The 2012 amendment**, effective July 1, 2012, deleted the former last sentence, which read: "The chairperson is authorized, after a reasonable attempt at consultation with the State School Superintendent, to require any employee of the Department of Education to furnish infor-

mation or perform functions for the state board."

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

## **OPINIONS OF THE ATTORNEY GENERAL**

**Chair of the State Board of Education has the authority to set the Board's agenda** and may require employees of the Department of Education to provide information to or perform functions for the board, but must first make a reasonable attempt to consult with the State School Superintendent. 2001 Op. Att'y Gen. No. 2001-5.

**Chair of the State Board of Education may**, after reasonable attempts at consultation with the State School Super-

intendent, direct the designation of one or more employees of the Department of Education to carry out various executive or administrative functions of the board. However, the board's authority is limited in that the board may not infringe on the Superintendent's authority to manage the day-to-day operations of the Department. 2001 Op. Att'y Gen. No. 2001-5.

**State Board of Education may require that the Board be provided with information** about Department of



Education employees. However, the frequency with which such information is required or the amount of such information could reach a point at which the

information improperly infringes on the day-to-day operation of the Department. 2001 Op. Att'y Gen. No. 2001-5.

### **20-2-6. Inspection committees.**

The State Board of Education is authorized to appoint committees composed of members of the state board as a majority vote of the state board may determine to travel within this state and inspect the institutions and facilities under its jurisdiction and control. (Ga. L. 1952, p. 155, § 1.)

### **20-2-7. Where committee meetings may be held.**

The members of the State Board of Education as a committee or any committee of the state board may hold committee meetings anywhere within or outside this state when necessary to obtain information for future guidance of the state board; provided, however, that no action of the state board shall be of force and effect unless such action is taken at a regular or called meeting of the state board. (Ga. L. 1953, Jan.-Feb. Sess., p. 110, § 1; Ga. L. 2012, p. 358, § 3/HB 706.)

**The 2012 amendment**, effective July 1, 2012, deleted “when authorized by board action taken at a meeting held at the state capital in the Department of Education” following “board” at the begin-

ning, inserted “that”, and deleted “held at the state capital in the Department of Education as provided by Code Section 20-2-5” following “state board” at the end.

## **RESEARCH REFERENCES**

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 74, 75.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 200 et seq.

### **20-2-8. Travel by members within or outside state.**

The State Board of Education may authorize any member of the state board to travel within or outside this state if necessary to obtain information for the guidance of the state board; provided, however, no member shall be authorized to make commitments for the state board on any matter that requires action of the state board as provided by law. (Ga. L. 1953, Jan.-Feb. Sess., p. 110, § 2.)

### **20-2-9. Per diem allowances and expenses of members.**

Each member of the State Board of Education shall receive the sum provided for by Code Section 45-7-21 for each day of actual attendance at meetings of the state board or for each day of travel, within or outside the state, as a member of a committee of the state board which has been

authorized by the chairman or by action of the state board, in addition to actual expenses incurred in connection therewith and actual costs of transportation to and from the place of meeting or place of visits or inspections. No member shall be authorized to receive the sums, expenses, and costs provided for by this Code section for more than 60 days per year. Such sums, expenses, and costs shall be paid from funds appropriated to or otherwise available to the Department of Education. (Ga. L. 1919, p. 288, § 10; Code 1933, § 32-402; Ga. L. 1937, p. 864, § 2; Ga. L. 1953, Jan.-Feb. Sess., p. 110, § 3; Ga. L. 1973, p. 701, § 4; Ga. L. 1977, p. 226, § 2; Ga. L. 1978, p. 4, § 4.)

### JUDICIAL DECISIONS

**Cited** in Cook v. Davis, 178 F.2d 595 (5th Cir. 1949).

### OPINIONS OF THE ATTORNEY GENERAL

**Application to board's regular work.** — Language of this section strongly suggests that the compensation provided and the limitation imposed were intended to apply only to the regular work of the board, either at the board's meetings, or in committees of the board authorized by the board or the board's chair. 1980 Op. Att'y Gen. No. 80-54 (see O.C.G.A. § 20-2-9).

**Board may not authorize payment except as provided by section.** — The State Board of Education may not authorize the payment of per diem and traveling expenses to any of the board's members for services performed as a member of the board except as specifically provided by this section. 1958-59 Op. Att'y Gen. p. 132 (see O.C.G.A. § 20-2-9).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, § 308 et seq.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 189 et seq.

### **20-2-10. Gifts or compensation to members, appointees, or their families from publishers prohibited; reporting offers; penalty.**

(a) No member or appointee of the State Board of Education or any other person having authority to select or aid in the selection of textbooks for the schools shall for himself or any member of his family receive any gift, compensation, or remuneration from any schoolbook publishing house, corporation, individual, or agent or representative of either; nor shall any such person, publishing house, or corporation offer, directly or indirectly, to any member of the state board or his family or appointees any gift, compensation, or remuneration. Should any such publishing house, corporation, or person offer to any such officers, their families, or appointees any compensation, remuneration, or gift, they shall report such offer to the grand juries of their respective counties.

The judges of the superior courts in charging the grand jury from term to term shall give instructions concerning this Code section and article.

(b) Any person violating subsection (a) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1911, p. 94, § 23; Ga. L. 1919, p. 288, § 15; Code 1933, §§ 32-406, 32-9901, 32-9902; Ga. L. 1937, p. 864, §§ 8, 9.)

**Cross references.** — Textbooks, T. 20, C. 2, A. 19.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 29.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 96 et seq.

**ALR.** — Gift for public school as a valid charitable gift, 48 ALR 1126.

Gift for lectures as a valid charitable gift, 48 ALR 1142.

### 20-2-11. Budgets; supervision of Department of Education; funds for state office.

The State Board of Education shall prepare and submit to the Governor and General Assembly an estimate of the funds necessary for the operation of the state public school system. It shall have general supervision of the Department of Education and may delegate to the State School Superintendent the authority to employ and dismiss such clerical employees, supervisors, administrators, and other employees who are members of the classified service under Article 1 of Chapter 20 of Title 45 as may be necessary for the efficient operation of the Department of Education. It shall set aside the necessary funds for the maintenance of the office of the department and the State School Superintendent, the amount and sufficiency of such funds to be in the discretion of the state board, such funds to be disbursed by the superintendent in the payment of salaries and travel expenses of employees and for printing, communication, equipment, repairs, and other expenses incidental to the operation of the department. (Ga. L. 1919, p. 288, § 11; Code 1933, § 32-403; Ga. L. 1937, p. 864, § 3; Ga. L. 1961, p. 39, § 3; Ga. L. 1991, p. 1630, § 1; Ga. L. 1992, p. 6, § 20.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1991, “superintendent” was substituted for “Superinten-

dent” in the last sentence of this Code section.

### JUDICIAL DECISIONS

**State Board of Education has authority to administer the state funds allocated to local schools.** The local boards have no authority to divert these funds. *Chatham Ass’n of Educators v.*

*Board of Pub. Educ.*, 231 Ga. 806, 204 S.E.2d 138 (1974).

**When board acts lawfully, effect on private schools not considered.** — So long as the State Board of Education is



acting within the board's lawful rights, the effect of public schools on private schools cannot be considered. *Worth v. Board of Pub. Educ.*, 177 Ga. 166, 170 S.E. 77 (1933).

**Cited in** *Sheffield v. State Sch. Bldg. Auth.*, 208 Ga. 575, 68 S.E.2d 590 (1952); *Bedingfield v. Parkerson*, 212 Ga. 654, 94 S.E.2d 714 (1956); *Wells v. Banks*, 153 Ga. App. 581, 266 S.E.2d 270 (1980).

## OPINIONS OF THE ATTORNEY GENERAL

**Constitutionality.** — Law does not exceed the constitutional limitations on use of moneys derived from state taxation. 1963-65 Op. Att'y Gen. p. 697.

**Delegation of discretionary authority prohibited.** — Discretionary authority or power which is vested by law in the State Board of Education cannot, absent specific legal authorization, be delegated to the State School Superintendent. 1986 Op. Att'y Gen. No. 86-29.

**Supervisory authority of board.** — Under the 1996 amendment of O.C.G.A. § 20-2-241, the State School Superintendent has the sole authority to organize and reorganize the Department of Education, while the State Board of Education retains the board's authority to provide general direction to, and inspect the performance of, the department. 1996 Op. Att'y Gen. No. 96-12.

**Recommendation, dealing with control of employees, is not to be construed as mandatory** on the part of the State Board of Education, but simply as a suggestion or recommendation to be followed or disregarded in the discretion of the State Board of Education. 1948-49 Op. Att'y Gen. p. 525 (decided under Ga. L. 1937, p. 864, prior to its revision by Ga. L. 1961, p. 39).

**Board not authorized to prescribe standards for nonpublic schools.** — There is no specific grant of authority to the State Board of Education to prescribe any standards or require a license for nonpublic schools, other than those enumerated elsewhere in the statutes. Therefore, it is presumed that the General Assembly did not intend for the board to have such authority. 1957 Op. Att'y Gen. p. 119.

**Final decision in determining question of merging school systems vested in voters.** — While former Code 1933, § 32-403 clearly gave the State Board of Education general supervision over the

common schools of this state and contained no inhibitions against the Board making suggestions or recommendations as to the advisability of merging independent school districts with county school systems, nevertheless, the final decision in determining the question of merger was vested exclusively in the qualified voters residing within the municipality or district as provided for in former Code 1933, § 32-1201. 1948-49 Op. Att'y Gen. p. 513.

**Local board authorized to include R.O.T.C. training in curriculum.** — State Board of Education has no specific regulation concerning military or R.O.T.C. training; however, the local board of education has the discretionary authority to include such training in the local curriculum, but no state educational funds would come into the program. 1957 Op. Att'y Gen. p. 108.

**State board may regulate releasing children during school hours.** — State Board of Education has the legal authority to establish regulations governing the release of school children during school hours. 1952-53 Op. Att'y Gen. p. 343.

**State board may pay city superintendents directly.** — Under former Code 1933, § 32-403, the State Board of Education could adopt the administrative policy of paying the state salaries of superintendents of independent city school systems directly to the superintendents in the same manner as now being done in the case of county school superintendents under former Code 1933, § 32-1006, provided the specific provisions of the various municipal charters are not in conflict with this policy; in such an event an exception should be made to the policy so as to conform to the intent of the General Assembly as expressed by that charter. 1958-59 Op. Att'y Gen. p. 111.

**Current and future employees of the State Department of Education must be included within the member-**

**ship of the Employees' Retirement System of Georgia.** 1983 Op. Att'y Gen. No. 83-2.

**Department employees not entitled to overtime pay during week spent on annual leave.** — Employee of the State Department of Education is not entitled to overtime pay for 12 hours of work performed during a week which the employee otherwise spent on annual leave, when the overtime rule, included in the administrative procedures of the State Department of Education, promulgated by the State Board of Education, defines overtime as hours worked in excess of 40 hours per work week. 1976 Op. Att'y Gen. No. 76-132.

**Department may pay salary of staff member completing work related course studies.** — If the course of advanced study being pursued by a staff member is directly related to assignment in the Department of Education or to assignments and the staff member is expected to undertake the completion of

those studies, the State Board of Education may lawfully continue to pay the member's salary while temporarily away from assigned duties in the department. 1963-65 Op. Att'y Gen. p. 697.

**Expenditure of state funds to provide insurance on television leasehold interest proper.** — Because a lease arrangement under Ga. L. 1963, p. 431, § 1 is a proper activity or agreement on the part of the State Board of Education, the expenditure of state funds to protect such a properly acquired leasehold interest, through the purchase of property insurance, is also proper. 1963-65 Op. Att'y Gen. p. 404.

**Fees upon public schools and teachers and students therein violates section.** — To permit a regulatory board to impose a registration fee upon a public school and a license fee upon teachers therein and to require a registration fee from students taking a course of study would be in violation of the law. 1963-65 Op. Att'y Gen. p. 250.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 78, 83.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 103 et seq.

**ALR.** — Schools: extent of legislative power with respect to attendance and curriculum, 39 ALR 477; 53 ALR 832.

Power and duty of school authorities to maintain kindergartens or specialized departments, 70 ALR 1313.

Determination of school attendance, enrollment, or pupil population for purposes of apportionment of funds, 80 ALR2d 953.

Regulations as to fraternities and similar associations connected with educational institution, 10 ALR3d 389.

Marriage or pregnancy of public school student as ground for expulsion or exclusion, or of restriction of activities, 11 ALR3d 996.

## 20-2-12. Educational television programs.

Reserved. Repealed by Ga. L. 2012, p. 358, § 4/HB 706, effective July 1, 2012.

**Editor's notes.** — This Code section was based on Ga. L. 1963, p. 431, § 1.

## 20-2-13. Educational research; preparation and publication of instructional material.

The State Board of Education may use and allocate money for educational research and preparation and publication of instructional material, and such funds may be paid upon approval of the Governor.

(Ga. L. 1951, p. 403, §§ 1-4; Ga. L. 1987, p. 3, § 20; Ga. L. 1990, p. 1972, § 1.)

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 16, 125, 126, 129 et seq., 349 et seq., 353.  
**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 736, 1074 et seq.

#### **20-2-14. Acceptance of donations, grants, and federal aid for vocational or other educational purposes; matching funds.**

The State Board of Education is authorized to receive, accept, hold, and operate, on behalf of the state, donations, grants, gifts, devises, and bequests of real, personal, and mixed property of every kind and character; to lease, manage, and otherwise administer such property for the use, benefit, and behalf of the public school system of Georgia; and to accept on behalf of the state any funds which may be now or hereafter provided for, or be, or hereafter become available or allotted to the state by virtue of any appropriation by Congress or under any governmental regulation, order, or declaration of policy for either vocational or other educational purposes conducted either in or out of school, in connection with, or as an incident of, any program of vocational education now or hereafter established as essential to national defense either for industrial or agricultural occupations, and whether as part of a federal or a state program or a combination of both, in furtherance of vocational educational objectives generally. The state board is authorized to acquire and hold title for and on behalf of the state for the benefit of the public school system thereof any equipment or supplies, both permanent and expendable, that may be necessary for such purposes; to act as the contracting agent therefor and the custodian thereof; to delegate, in whole or in part, any function or activity enumerated or contemplated under this Code section; to contract with and cooperate with any department, agency, or instrumentality, either of the state or of the United States in any manner which shall be requisite or incident to this Code section and which in the judgment of the state board may be deemed proper for the carrying into effect of the purposes of this article; and to use so much of the public school fund or other funds appropriated by the General Assembly as may be necessary to match any such federal aid or to meet the terms of any past, present, or future grant to the state or any local school unit whereby the state or any local school unit, respectively, may be enabled to derive full advantage of the benefits thereof to the state as contemplated under the terms and provisions of any such grant for educational purposes. (Ga. L. 1937, p. 864, § 4; Ga. L. 1941, p. 568, § 1.)



**Cross references.** — Acceptance of bequests, donations, by State Board of Education, Ga. Const. 1983, Art. VIII, Sec. II, Para. I. Acceptance of bequests, donations, by local boards of education, Ga. Const. 1983, Art. VIII, Sec. V, Para. VI.

**Administrative rules and regulations.** — Grant programs, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Chapter 160-1-4.

### OPINIONS OF THE ATTORNEY GENERAL

**Contract with Veterans Administration to use federal funds for veterans program.** — State Board of Education may contract with the Veterans Administration to use federal funds to carry on the Veterans Farm Training Program in the high schools of the state and may authorize the State School Superintendent to execute the contract on behalf of the board. 1945-47 Op. Att'y Gen. p. 197.

**Delegation to state surplus agency of power to enter into agreement with federal department.** — State Board of Education can delegate by resolution to the state agency for surplus property to enter into a cooperative agreement with the United States Department of Health, Education and Welfare (now Department of Health and Human Services) in order to utilize surplus property. 1963-65 Op. Att'y Gen. p. 105.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 91.

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 508, 509.

**ALR.** — Gift for public school as a valid charitable gift, 48 ALR 1126.

Gift for lectures as a valid charitable gift, 48 ALR 1142.

### 20-2-14.1. Georgia Foundation for Public Education.

(a) There is established the Georgia Foundation for Public Education existing as a public corporation and instrumentality of the state, exclusively limited to the following charitable and public purposes and powers:

(1) To solicit and accept contributions of money and in-kind contributions of services and property for the purpose of supporting educational excellence in Georgia;

(2) To solicit and accept contributions of money and in-kind contributions of services and property for the purpose of supporting educational excellence at Georgia Academy for the Blind, Georgia School for the Deaf, and Atlanta Area School for the Deaf;

(3) To sell and dispose of contributed property and securities in accordance with the prudent person rule;

(4) To make and disburse contributions to the department and others for such purposes;

(5) To contract and be contracted with for purposes of the foundation; and

(6) To seek recognition of tax exempt status by the United States Internal Revenue Service and to seek confirmation concerning the deductibility of contributions.

(b) The Georgia Foundation for Public Education shall be attached to the department for administrative purposes. The Attorney General shall be the attorney for the foundation. The State School Superintendent may solicit and accept contributions from the foundation. The department may cooperate and contract with the foundation for their mutual benefit and authorize others to do so. Upon any dissolution of the foundation, its assets shall devolve in trust to the State Board of Education or its successor for use only for the benefit of the department and the schools listed in paragraph (2) of subsection (a) of this Code section.

(c) The creation of the foundation and the execution of its corporate purposes shall be in all respects for the benefit of the people of this state and constitute a public and charitable purpose. Further, the foundation performs an essential governmental function in the exercise of the powers conferred upon it by this Code section. Accordingly, the foundation shall not be subject to taxation or assessment in any manner, including without limitation taxation or assessment upon any transaction, income, money, or other property or activity. The exemptions granted by this Code section shall not be extended to any private person or entity.

(d)(1) The foundation shall be governed by a board of directors composed of between five and 15 members as determined by the State School Superintendent. Members of the board of directors shall be appointed by either the State School Superintendent or the State Board of Education. For every three board members appointed by the State School Superintendent, the State Board of Education may appoint two board members. At least two members of the board of directors appointed by the State Board of Education shall represent the interests of students who are blind or deaf. The chairperson of the Budget and Finance Committee of the State Board of Education, or such committee's successor, shall be an ex officio member of the foundation board of directors. The foundation board of directors shall draft and adopt governance bylaws, subject to approval by the State School Superintendent.

(2) The foundation shall have complete discretion to invest any and all assets as it sees fit in accordance with the prudent person rule, and at no time shall the assets of the foundation be considered assets of the state.

(3) The foundation shall not be subject to state purchasing laws, as contained in Article 3 of Chapter 5 of Title 50 or in other provisions of

this Code, or required to dispose of property in accordance with Article 4 of Chapter 5 of Title 50.

(4) The foundation shall be authorized to purchase insurance as provided by Code Section 50-5-16.

(5) The foundation shall have the authority to roll over any unused funds into the next fiscal year.

(e) The foundation's operations shall not be subject to Article 1 of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(f) The foundation shall be deemed to be a charitable organization for purposes of voluntary contributions from state employees pursuant to Article 3 of Chapter 20 of Title 45. (Code 1981, § 20-2-14.1, enacted by Ga. L. 2010, p. 411, § 1/SB 427.)

**Effective date.** — This Code section became effective July 1, 2010.

law on administrative law, see 62 Mercer L. Rev. 1 (2010).

**Law reviews.** — For annual survey of

## 20-2-15. Acceptance of federal and other aid to educational television.

The State Board of Education is authorized and is designated the proper state agency to receive all federal funds and any other funds that may be appropriated, granted, or otherwise made available to the state for educational television purposes at all levels of education and shall, after receipt of such funds, use, allot, or distribute them in accordance with the intent, terms, and conditions of such appropriations and grants. (Ga. L. 1963, p. 431, § 2.)

**Cross references.** — Acceptance of bequests, donations, by State Board of Education, Ga. Const. 1983, Art. VIII, Sec. II, Para. I; Ga. Const. 1983, Art. VIII, Sec. IV,

Para. I(e). Acceptance of bequests, donations, grants, and transfers by local boards of education, Ga. Const. 1983, Art. VIII, Sec. V, Para. VI.

## OPINIONS OF THE ATTORNEY GENERAL

**Board can accept donations and apply funds directly to support educational television.** — State Board of Education can accept donations and apply those funds to the support of educational television without depositing such funds in the state treasury. Since the funds would not be drawn from the state treasury, the funds would not be subject to the appropriations process. 1979 Op. Att'y Gen. No. 79-4.

**If funds designated for solicitation purposes, board can so use.** — If the

State Board of Education receives funds by appropriation, grant, or donation which are specifically designated for the purpose of soliciting other funds, then this section contains express authority for the board to use such funds for that purpose. 1979 Op. Att'y Gen. No. 79-4 (see O.C.G.A. § 20-2-13).

**Board cannot expend state funds to make solicitations for donations.** — Implied power of the State Board of Education does not extend to the expenditure of state funds to make general solicita-



tions for donations since such an expenditure is not clearly authorized, nor is it reasonably necessary to the exercise of the

authority to receive voluntary donations. 1979 Op. Att'y Gen. No. 79-4.

### RESEARCH REFERENCES

**ALR.** — Legal aspects of television, 15 ALR2d 785; 56 ALR3d 386; 57 ALR3d 8.

### **20-2-16. Acceptance and allotment of federal aid and other funds for school construction; determining needs; planning financing; building code; safety inspections and recommendations.**

(a) The State Board of Education is authorized to receive any federal funds or any other funds made available to it for schoolhouse construction or improvement of the schools under its jurisdiction and to allot such funds to the boards of education of county and independent school systems under such rules and regulations as may be adopted by the state board, subject to such limitations as may be imposed in the grant or appropriation of such funds.

(b) In order to assist the boards of education of county and independent school systems, upon their request, the state board is authorized to make comprehensive studies to determine the need for and the location of public school buildings, to determine the safety and educational requirements of public school buildings, to plan the methods of financing the cost of constructing and equipping such buildings, and to establish a code of school building practices and standards.

(c) The state board is authorized to inspect any public school building and, if such building is found to be dangerous to the lives or health of the pupils, to notify the county or independent board of education in writing of the unsafe or unhealthful conditions revealed, including in the notification specific suggestions for the correction of such unsafe or unhealthful conditions. (Ga. L. 1945, p. 200, §§ 1-3.)

**Cross references.** — Standards and requirements for construction of buildings and other structures generally, T. 8, C. 2.

### JUDICIAL DECISIONS

**Cited** in *Sheffield v. State Sch. Bldg. Auth.*, 208 Ga. 575, 68 S.E.2d 590 (1952).

### OPINIONS OF THE ATTORNEY GENERAL

**Initiation of code of building standards.** — Establishment of code of school

building standards cannot be initiated by State Department of Education but is de-

pendent upon a request by a school system. 1948-49 Op. Att'y Gen. p. 86.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 357 et seq.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 566 et seq.

#### 20-2-17. Lease of state property to local school boards.

The Department of Education, on behalf of the state, may lease for periods up to four years any state-owned property in its control and held for its use to county school boards, city school boards, or other like agencies in the state having the power to operate and regulate any public school in the state, provided that any such property so leased shall be used by the lessee only for administrative, maintenance, warehouse, or storage purposes. (Ga. L. 1961, p. 472, § 1.)

#### RESEARCH REFERENCES

**ALR.** — Power of school or local authorities as to granting leases of school property, 111 ALR 1051.

Zoning regulations as applied to public elementary and high schools, 74 ALR3d 136.

#### 20-2-18. Continuation of trusts for institutions for blind and deaf; board to be trustee.

Any trust fund or property, real, personal, or mixed, specifically including the "Pupils' Trust Fund" pertaining to the Georgia Academy for the Blind, that may have been created by will or otherwise as a fund or gift or donation or devise to any board of trustees of the Georgia Academy for the Blind or the Georgia School for the Deaf or the Atlanta Area School for the Deaf, or to any executor or trustee to and for the use, benefit, or on behalf of any such institution, shall not lapse but shall remain valid and of full force and effect; and such beneficial interest under any such deed or gift or will or other conveyance shall vest in the State Board of Education as trustee to and for the use, benefit, and on behalf of the institution intended to be benefited by the gift, devise, or other conveyance in its favor. In any case in which any deed or gift or will or other conveyance for the use or benefit of the Academy for the Blind or the schools for the deaf requires a trustee and no trustee shall exist, the state board shall be and become a substituted trustee to carry out the beneficial purposes of such gift, devise, or conveyance. (Ga. L. 1943, p. 230, § 1; Ga. L. 1980, p. 645, § 7.)

RESEARCH REFERENCES

C.J.S. — 90 C.J.S., Trusts, §§ 207, 208, 223.

**20-2-19. Receipt and review of asbestos management plans by State Board of Education; disapproval of plans; funding; regulation; accreditation; effect on other powers of board.**

(a) The Governor may designate the State Board of Education to receive and review asbestos management plans of local boards of education and of owners of private, nonprofit elementary and secondary school buildings, as provided in the federal Asbestos Hazard Emergency Response Act of 1986, 100 Stat. 2970, P.L. 99-519, amending P.L. 99-469, hereinafter referred to as “AHERA.” Any such designation by the Governor prior to March 31, 1988, is ratified and affirmed and shall have effect from the date thereof.

(b) The State Board of Education may receive and disapprove such plans upon the grounds stated in and as provided in AHERA.

(c) The State Board of Education may apply for, accept, and disburse federal funds to local boards of education and to owners of private, nonprofit elementary and secondary school buildings for activities involving the preparation and implementation of asbestos management plans. The State Board of Education may apply for, accept, and utilize federal funds for its activities under this Code section, including the training and accreditation of staff.

(d) The State Board of Education shall prescribe such policies, rules, regulations, and standards as it deems appropriate to carry out purposes of AHERA.

(e) The State Board of Education shall have the authority to adopt an accreditation program and accredit persons who inspect and prepare management plans and conduct response activities for local units of administration, as defined by AHERA.

(f) The powers bestowed by this Code section shall be cumulative of other powers of the State Board of Education and shall not diminish them in any way. This Code section shall not be construed to diminish the powers of any other state agency or instrumentality. (Code 1981, § 20-2-19, enacted by Ga. L. 1988, p. 612, § 1.)

**Cross references.** — Georgia Asbestos Safety Act, T. 12, C. 12.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1992, “March

31, 1988,” was substituted for “the effective date of this Code section” in the second sentence of subsection (a).

**U.S. Code.** — The federal Asbestos



Hazard Emergency Response Act of 1986, referred to in this Code section, is codified primarily at 15 U.S.C. § 2641 et seq.

### **20-2-20. Regional offices authorized; employees.**

The State Board of Education is authorized to establish regional offices of the Department of Education, subject to appropriation by the General Assembly. Should the state board establish such regional offices of the Department of Education, their service areas shall be congruous with the service areas of regional educational service agencies as provided for in Code Section 20-2-270 and may include more than one regional educational service agency. All employees of such regional offices shall be employees of the Department of Education. (Code 1981, § 20-2-20, enacted by Ga. L. 2000, p. 618, § 5.)

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

## **ARTICLE 2**

### **STATE SCHOOL SUPERINTENDENT**

**Cross references.** — State School Superintendent generally, Ga. Const. 1983, Art. VIII, Sec. III, Para. I.

### **20-2-30. Election; office; forms, blanks, and instructions for subordinate officials; appeal of decisions to State Board of Education.**

The State School Superintendent shall be elected by the persons qualified to vote for members of the General Assembly at the same time and in the same manner and for the same term as the Governor is elected. A suitable office shall be furnished him at the seat of government. He shall prescribe suitable forms for the reports required of subordinate school officers and blanks for their guidance in transacting their official business and shall from time to time prepare and transmit to them such instructions as he may deem necessary for the faithful and efficient execution of the school laws; and by what is thus communicated to them they shall be bound to govern themselves in the discharge of their official duties, provided there shall always be an appeal from the State School Superintendent to the State Board of Education. (Ga. L. 1919, p. 288, § 54; Code 1933, § 32-501; Ga. L. 1972, p. 1015, § 1002.)

**Cross references.** — Delegation of authority by state board, § 20-2-11.

## JUDICIAL DECISIONS

**Under the 1876 Constitution, the legislature was empowered to create court or courts having jurisdiction of**

**school administrative controversies.** Board of Educ. v. Board of Educ., 173 Ga. 203, 159 S.E. 712 (1931).

## OPINIONS OF THE ATTORNEY GENERAL

**Superintendent authorized and obligated to recommend employment and dismissal of department employees.** — State School Superintendent has no authority in law to employ or dismiss employees of the Department of Education, but the superintendent has the authority and the duty to recommend employment and dismissal to the State Board of Education; employees of the department are employed and dismissed by the State Board of Education, but only on the recommendation of the superintendent. 1962 Op. Att'y Gen. p. 177.

**Until employee dismissed by board, person remains employee.** — Until such time as an employee is dismissed by the State Board of Education on recom-

mendation of the State School Superintendent, the employee is and remains an employee of the department and on pay status. 1962 Op. Att'y Gen. p. 177.

**When employee dismissed, employee may obtain full hearing before board.** — When an employee is dismissed by the state board on the recommendation of the State School Superintendent, the causes necessitating the recommendations must first be made known to the board but without a hearing thereon; then the employee may, if desiring, request and obtain a full hearing before the State Board of Education on the causes necessitating the employee's dismissal. 1962 Op. Att'y Gen. p. 177.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 66, 67, 78.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 500 et seq.

**ALR.** — Power to require construction or repair of school buildings, 1 ALR 1559.

Power of school authorities to transfer teacher from one school or district to another, 103 ALR 1382.

Right of student to hearing on charges before suspension or expulsion from educational institution, 58 ALR2d 903.

Validity of regulation by public school authorities as to clothes or personal appearance of pupils, 14 ALR3d 1201.

## 20-2-31. Qualifications.

To render a person eligible to hold the office of State School Superintendent, he or she shall hold a four-year degree from an accredited college or university. No person who has been convicted of any crime involving moral turpitude shall be eligible to hold the office of State School Superintendent. (Ga. L. 1919, p. 288, § 55; Code 1933, § 32-502; Ga. L. 1963, p. 510, § 1; Ga. L. 1987, p. 3, § 20; Ga. L. 1997, p. 690, § 1.)

**Cross references.** — Qualifications generally, Ga. Const. 1983, Art. V, Sec. III, Para. II.

### OPINIONS OF THE ATTORNEY GENERAL

**Qualifications to be read broadly.** — Assuming O.C.G.A. § 20-2-31 is enforceable, the qualifications for the office of State School Superintendent contained in that section should be read broadly so that the requirement of three years' practical experience as a teacher could include

three years' experience as a teacher in a school classroom even if the person has no teachers' certification. Whether a particular candidate meets such qualification is a factual issue to be determined on a case by case basis. 1993 Op. Att'y Gen. No. U93-7.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 68, 69.

### 20-2-32. Bond; oath.

Upon entering upon the discharge of his official duties, the State School Superintendent shall give bond in the penal sum of \$50,000.00 to the state, with some approved surety company which shall be acceptable to the Secretary of State, conditioned that he will truly account for and apply all money or other property which may come into his hands in his official capacity for the use and benefit of the purposes for which it is intended and that he will faithfully perform the duties enjoined upon him by law. He shall take and subscribe an oath to discharge the duties of his office diligently and faithfully. The bond, with certified endorsement thereon, shall be filed with the Secretary of State, and the premium charged for such bond shall be paid out of the state treasury. (Ga. L. 1919, p. 288, § 56; Code 1933, § 32-503; Ga. L. 1964, p. 677, § 1.)

**Cross references.** — Official bonds generally, T. 45, C. 4.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, § 369. 68 Am. Jur. 2d, Schools, § 167.

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 152, 324, 325.

### 20-2-33. Compensation and expenses.

The State School Superintendent shall be compensated as provided in Code Sections 45-7-3 and 45-7-4. He shall also be reimbursed for his expenses incurred in connection with the official duties of his office as provided in Code Section 45-7-21. (Ga. L. 1919, p. 288, § 66; Ga. L. 1931, p. 7, § 96; Code 1933, § 32-510; Ga. L. 1937, p. 864, § 5; Ga. L. 1941, p. 573, § 1; Ga. L. 1943, p. 639, § 1; Ga. L. 1947, p. 673, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 613, § 1; Ga. L. 1960, p. 1184, § 1; Code



1933, § 32-510, enacted by Ga. L. 1966, p. 394, § 1; Ga. L. 1970, p. 116, § 1; Ga. L. 1973, p. 701, §§ 1-3; Ga. L. 1978, p. 4, §§ 1-3.)

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, §§ 308, 309, 311, 317. **C.J.S.** — 78 C.J.S., Schools and School Districts, § 102.

### 20-2-34. Recommendations to State Board of Education; suspension of county school superintendents; appeal.

The State School Superintendent shall carry out and enforce all the rules and regulations of the State Board of Education and the laws governing the schools receiving state aid; he shall from time to time make such recommendations to the state board as may affect the welfare and efficiency of the public schools. He shall have authority to suspend a county school superintendent for incompetency, willful neglect of duty, misconduct, immorality, or the commission of any crime involving moral turpitude, provided that all of his acts in this matter shall be subject to the approval of the state board and the party so suspended may appeal his case to the state board, whose decision shall be final. (Ga. L. 1919, p. 288, § 58; Code 1933, § 32-505; Ga. L. 1982, p. 3, § 20; Ga. L. 1992, p. 6, § 20.)

### JUDICIAL DECISIONS

**Section does not deny mandamus remedy to citizens and taxpayers against school officers.** — Power conferred upon the State School Superintendent to enforce the law governing schools of the state receiving state aid does not deny the remedy of mandamus to citizens

and taxpayers who are patrons of the public schools against officers charged with the duty of building a schoolhouse in their district. Plainfield Consol. Sch. Dist. v. Cook, 173 Ga. 447, 160 S.E. 617 (1931).

**Cited in** Guy v. Nelson, 202 Ga. 728, 44 S.E.2d 775 (1947).

### OPINIONS OF THE ATTORNEY GENERAL

**Superintendent not authorized to determine title to county office upon suspending local superintendent.** — While the State School Superintendent has the right to suspend a county super-

intendent for certain causes, the law does not provide or empower the superintendent with the authority to determine the title to this county office. 1945-47 Op. Att'y Gen. p. 203.

### RESEARCH REFERENCES

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 500 et seq.

**20-2-35. Duty to visit counties.**

It shall be the duty of the State School Superintendent to visit, as often as possible, the several counties for the purpose of examining into the administration of the school law, counseling with school officers, delivering public addresses, inspecting school operations, and doing such other acts as he may deem in the interest of public education. (Ga. L. 1919, p. 288, § 59; Code 1933, § 32-506.)

**20-2-36. Duty in case of misapplication of state funds.**

In the event of a misapplication of any of the funds apportioned to any of the institutions of learning or schools receiving state aid, the State School Superintendent shall at once proceed to recover such funds by the institution of proper proceedings in the courts after demand to settle the matter is made upon the party misapplying the funds. (Ga. L. 1919, p. 288, § 60; Code 1933, § 32-507.)

**Cross references.** — Accounting for public funds generally, T. 45, C. 8.

**OPINIONS OF THE ATTORNEY GENERAL**

**Funds usable for professional organization membership if school derives tangible educational benefit.** — School funds may be used to pay dues for membership in a professional organization if the school board and school system derive some tangible educational benefit from membership in the organization. 1974 Op. Att'y Gen. No. 74-72.

**RESEARCH REFERENCES**

**ALR.** — Right of school district to maintain action based on misapportionment of school money, 105 ALR 1273.

**20-2-37. Annual reports by State School Superintendent.**

Reserved. Repealed by Ga. L. 1985, p. 1657, § 2, effective July 1, 1986.

**Editor's notes.** — This Code section was based on Ga. L. 1919, p. 288, § 61; Code 1933, § 32-508 and Ga. L. 1976, p. 540, § 1.

**20-2-38. Requiring reports from local school officials.**

Reserved. Repealed by Ga. L. 1985, p. 1657, § 2, effective July 1, 1986.

**Editor's notes.** — This Code section was based on Ga. L. 1919, p. 288, § 75 and Code 1933, § 32-515.

## ARTICLE 3

### LOCAL BOARDS OF EDUCATION

**Cross references.** — Local school systems generally, Ga. Const. 1983, Art. VIII, Sec. V.

#### JUDICIAL DECISIONS

**County superintendent and school board made constitutional offices by 1945 Constitution.** — Constitution of 1945 did not purport to disturb the comprehensive code of statutory school laws other than to make the offices of the county school superintendent and the county boards of education constitutional rather than statutory. *Saxon v. Bell*, 201 Ga. 797, 41 S.E.2d 536 (1947).

**Board member entitled to hold office until successor elected.** — Member of the county board of education, whose term had not expired at the time of the adoption of the 1945 Constitution, was entitled to hold office until a successor was elected and qualified. *Powell v. Price*, 201 Ga. 833, 41 S.E.2d 539 (1947).

**County board of education is not a natural person, a partnership, or a body corporate** with authority to sue or be sued in the ordinary sense. Accordingly, the county board could not as sole plaintiff maintain a suit for an injunction to restrain the defendant from interfering with the possession and use of property claimed by the defendant. *Verner v. Board of Educ.*, 203 Ga. 521, 47 S.E.2d 500 (1948).

**Cited in** *Burke v. Wheeler County*, 54 Ga. App. 81, 187 S.E. 246 (1936); *Wheeler v. Board of Trustees*, 200 Ga. 323, 37 S.E.2d 322 (1946); *Davis v. Board of Educ.*, 203 Ga. 44, 45 S.E.2d 429 (1947).

#### OPINIONS OF THE ATTORNEY GENERAL

**County superintendent and school board made constitutional offices by 1945 Constitution.** — The 1945 Constitution did not purport to disturb the comprehensive code of statutory school laws other than to make the offices of the county school superintendent and the county boards of education constitutional rather than statutory. 1958-59 Op. Att'y Gen. p. 143.

**Local school districts have been abolished**, and the trustees are required to turn over to the county board of education all funds derived from the maintenance tax or from the bond tax, the trustees retaining only advisory functions. 1945-47 Op. Att'y Gen. p. 186.

**Provisions creating county bond**

**commission invalid.** — Act creating a county bond commission to control the expenditure of funds raised by the issuance of bonds of a county school district is invalid as a special act in conflict with a general law on the same subject. 1945-47 Op. Att'y Gen. p. 172.

**Student in vocational program remains in common or public school system.** — High school student who is assigned to a vocational education program operated by a county or independent school system remains in the common or public schools operated by the system, and the student may therefore continue to be included in the county or independent system's computations of "average daily attendance" for purposes of the system's



general allotment of teachers and other professional personnel. 1963-65 Op. Att'y Gen. p. 775.

### RESEARCH REFERENCES

**ALR.** — Extent of power of school district to provide for the comfort and convenience of teachers and pupils, 52 ALR 249.

Right of student to hearing on charges before suspension or expulsion from educational institution, 58 ALR2d 903.

Libel and slander: privileged nature of statements or utterances by member of

school board in course of official proceedings, 85 ALR3d 1137.

Liability of university, college, or other school for failure to protect student from crime, 1 ALR4th 1099.

Tort liability of public schools and institutions of higher learning for educational malpractice, 1 ALR4th 1139.

### 20-2-49. Standards for local board of education members.

The General Assembly finds that local boards of education play a critical role in setting the policies that lead to the operation and success of local school systems. School board members hold special roles as trustees of public funds, including local, state, and federal funds, while they focus on the singular objective of ensuring each student in the local school system receives a quality basic education. Board duties require specialized skills and training in the performance of vision setting, policy making, approving multimillion dollar budgets, and hiring a qualified superintendent. The motivation to serve as a member of a local board of education should be the improvement of schools and academic achievement of all students. Service on a local board of education is important citizen service. Given the specialized nature and unique role of membership on a local board of education, this elected office should be characterized and treated differently from other elected offices where the primary duty is independently to represent constituent views. Local board of education members should abide by a code of conduct and conflict of interest policy modeled for their unique roles and responsibilities. And although there are many measures of the success of a local board of education, one is clearly essential: maintaining accreditation and the opportunities it allows the school system's students. (Code 1981, § 20-2-49, enacted by Ga. L. 2010, p. 452, § 1/SB 84.)

**Effective date.** — This Code section became effective July 1, 2010.

### 20-2-50. County school districts; county board for each county.

Each county of this state, exclusive of any independent school system in existence in a county, shall compose one school district and shall be confined to the control and management of a county board of education, except to the extent that area school systems are created pursuant to

Article VIII, Section V, Paragraph I of the Constitution of Georgia. (Ga. L. 1919, p. 288, §§ 76, 117; Code 1933, §§ 32-901, 32-1101; Ga. L. 1946, p. 206, § 8; Ga. L. 1983, p. 3, § 53.)

**Cross references.** — Consolidation of independent and county school systems, § 20-2-370 et seq.

**Law reviews.** — For survey article on local government law, see 34 Mercer L. Rev. 225 (1982).

## JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1551 (81), which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Purpose.** — O.C.G.A. § 20-2-50 was not intended to prevent existence or growth of independent school systems. *Upson County Sch. Dist. v. City of Thomaston*, 248 Ga. 98, 281 S.E.2d 537 (1981).

**Authority of local boards to govern local systems constitutional.** — Since the Georgia Constitution and Code provides local school boards with sweeping authority in the governing of local school systems, the fact that other school boards may choose to employ other methods to control the quality of education in their systems does not evince a denial of equal protection. *Wells v. Banks*, 153 Ga. App. 581, 266 S.E.2d 270 (1980).

**"Teacher-Tenure Act for Richmond County" (Ga. L. 1937, pp. 1409-1413) was not invalid** as without constitutional authority under Ga. Const. 1945, Art. VII, Sec. IV, Para. I (see now Ga. Const. 1983, Art. III, Sec. VI, Para. IV), or as contrary to the limitations of that paragraph. *County Bd. of Educ. v. Young*, 187 Ga. 644, 1 S.E.2d 739 (1939).

**Section is exhaustive as to who shall and must control and manage schools of county.** — Boards alone can receive and expend all school funds. *Stewart v. Davidson*, 218 Ga. 760, 130 S.E.2d 822 (1963).

**County schools' management and control confided in county board.** — Each county of the state is made a school district, and the management and control of the schools of the county is confided in

the county board of education. *Pass v. Pickens*, 204 Ga. 629, 51 S.E.2d 405 (1949).

**County cannot be sued unless law gives power.** — County cannot be sued unless there is a law which expressly or by necessary implication gives the county such power. *Board of Educ. v. Hunt*, 29 Ga. App. 665, 116 S.E. 900 (1923) (decided under former Code 1910, § 1551 (81)).

**School district is a body corporate with the capacity to sue and be sued.** *Foster v. Cobb County Bd. of Educ.*, 133 Ga. App. 768, 213 S.E.2d 38 (1975).

**School district is a body corporate that may be sued** when the district has incurred a liability under the law such as upon a district contract, bond issues, building contracts, etc. *Ty Ty Consol. Sch. Dist. v. Colquitt Lumber Co.*, 153 Ga. 426, 112 S.E. 561 (1922) (decided under former Code 1910, § 1551 (81)).

**County board of education is not a body corporate** with authority to sue and be sued in the ordinary sense. *Mattox v. Board of Educ.*, 148 Ga. 577, 97 S.E. 532, 5 A.L.R. 568 (1918) (decided under former Code 1910, § 1551 (81)); *Ferguson v. Smith*, 27 Ga. App. 806, 110 S.E. 42 (1921) (decided under former Code 1910, § 1551 (81)); *Smith v. Board of Educ.*, 153 Ga. 758, 113 S.E. 147 (1922) (decided under former Code 1910, § 1551 (81)); *Board of Educ. v. Hunt*, 29 Ga. App. 665, 116 S.E. 900 (1923) (decided under former Code 1910, § 1551 (81)).

Language of this section requires the conclusion that a county board of education is not a political subdivision and not a body corporate liable to suit in the ordinary sense (except in cases made so by an act of the legislature), and that the board of education of a particular county, through the board's members, merely has

the control and management of the county's school district. *Ray v. Cobb County Bd. of Educ.*, 110 Ga. App. 258, 138 S.E.2d 392 (1964) (see O.C.G.A. § 20-2-50).

**School board of education is not a body corporate** and does not have the capacity to sue or be sued. *Foster v. Cobb County Bd. of Educ.*, 133 Ga. App. 768, 213 S.E.2d 38 (1975).

**Trustees of various school districts of the counties of this state are public officials thereof**, and a treasurer appointed by the trustees from among themselves for the purpose of handling and taking care of the funds of the school district acts in that capacity as a public official. *U.S. Fid. & Guar. Co. v. McCurdy*, 51 Ga. App. 507, 180 S.E. 902 (1935).

**County board is without power to delegate the board's authority to manage affairs of school district.** *State Bd. of Educ. v. Elbert County Bd. of Educ.*, 112 Ga. App. 840, 146 S.E.2d 344 (1965).

**County superintendent cannot contract debt on behalf of board without previous authority from the board.** *State Bd. of Educ. v. Elbert County Bd. of*

*Educ.*, 112 Ga. App. 840, 146 S.E.2d 344 (1965).

**Cited in** *Huie v. Morris*, 176 Ga. 562, 168 S.E. 566 (1933); *Keever v. Board of Educ.*, 188 Ga. 299, 3 S.E.2d 886 (1939); *Davis v. Haddock*, 191 Ga. 639, 13 S.E.2d 657 (1941); *Chappell v. Small*, 194 Ga. 143, 20 S.E.2d 916 (1942); *McCullum v. Bass*, 201 Ga. 537, 40 S.E.2d 650 (1946); *Robinson v. State*, 82 Ga. App. 584, 61 S.E.2d 773 (1950); *Walker v. McKenzie*, 209 Ga. 653, 74 S.E.2d 870 (1953); *Irwin v. Crawford*, 210 Ga. 222, 78 S.E.2d 609 (1953); *Tripp v. Martin*, 210 Ga. 284, 79 S.E.2d 521 (1954); *Cotton States Mut. Ins. Co. v. Keefe*, 215 Ga. 830, 113 S.E.2d 774 (1960); *Oconee County v. Rowland*, 107 Ga. App. 108, 129 S.E.2d 373 (1962); *Walton County Bd. of Educ. v. Academy of Social Circle*, 229 Ga. 114, 189 S.E.2d 690 (1972); *Battle v. Cherry*, 339 F. Supp. 186 (N.D. Ga. 1972); *Young v. State*, 132 Ga. App. 790, 209 S.E.2d 96 (1974); *Dougherty County v. White*, 439 U.S. 32, 99 S. Ct. 368, 58 L. Ed. 2d 269 (1978); *Banks County Sch. Dist. v. Blackwell*, 191 Ga. App. 790, 383 S.E.2d 159 (1989).

## OPINIONS OF THE ATTORNEY GENERAL

**Law vests full power and authority for operation of schools in county board of education.** 1958-59 Op. Att'y Gen. p. 137.

**Management and control of local school systems are vested at the local level** in Georgia, specifically in the boards of education of the various county and independent school systems, and this very broad power includes (subject to such minimum standards as may be established by the State Board of Education as a condition of continued state fiscal assistance) the right to decide upon educational programs, curricula, course offerings, and general educational opportunities. 1977 Op. Att'y Gen. No. 77-60.

**Authority to provide educational opportunities not limited to specific ages.** — Authority vested in the boards of education of the various county and independent school systems to implement educational programs and in general to provide for educational opportunities is not

limited to specific ages. 1977 Op. Att'y Gen. No. 77-60.

**Matter of ages of children taught addressed by boards.** — Minimum and maximum ages of children who may be taught in the public schools is a matter which addresses itself to the local boards of education. 1965-66 Op. Att'y Gen. No. 65-10.

**County board may divide county into attendance areas.** — County board of education may not divide the county into school districts, but it appears that a county board does have the power to divide the county into attendance areas, and require that persons of school age living in a certain area attend the school in that area. 1950-51 Op. Att'y Gen. p. 41.

**County board may designate pupil assignment.** — Local board of education has the authority to designate which school within the board's school district shall be attended by a particular pupil, i.e., assignment of pupils in the public schools. 1958-59 Op. Att'y Gen. p. 137.



Local board of education has the authority to designate which school within the board's school district shall be attended by a particular pupil. 1960-61 Op. Att'y Gen. p. 142.

**If board abuses discretion in pupil assignments, aggrieved party can take proper action.** — County board of education can determine where a pupil may attend school and can deny such pupil, in the board's discretion, the right to attend a school of the pupil's choice; when, however, it can be shown that the county board of education was abusing the discretion vested in the board, then the aggrieved party can take proper action as provided by law. 1950-51 Op. Att'y Gen. p. 273.

**State board cannot stop student from passing should county board feel child reading sufficiently.** — Inasmuch as this section has been judicially endorsed numerous times, and in consideration of the fact that the State Board of Education has no express authority to preempt local boards in decisions concerning promotion of individual students, it would appear that the state board cannot directly stop an individual student from passing to the next grade level should the

county board feel the child is reading sufficiently. 1975 Op. Att'y Gen. No. 75-63 (see O.C.G.A. § 20-2-50).

**State board may, as condition of fiscal assistance, require implementation of state reading requirements.** — Although the State Board of Education does not have explicit authority to directly preclude a student in a local school district from progressing from one grade level to another if the child is not capable of reading in the higher grade level, the board may, as a condition of continued state fiscal assistance, require local boards of education to implement state board established reading requirements. 1975 Op. Att'y Gen. No. 75-63.

**Charging fee for school transcripts is local matter within discretion of county board of education.** 1957 Op. Att'y Gen. p. 97.

**Sharing of services between boards of education unauthorized.** — Georgia boards of education are not empowered to share services by creating and utilizing a nonprofit corporation such as the Consortium for Adequate School Funding in Georgia, Inc., for the purpose of challenging state school funding by litigation or otherwise. 2009 Op. Att'y Gen. No. 2009-3.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 20 et seq., 66.

**Am. Jur. Proof of Facts.** — 22 Am. Jur. Proof of Facts, Schools, § 4.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 14 et seq.

**ALR.** — Power of school district or school board to employ counsel, 75 ALR2d 1339.

## **20-2-51. Election of local board of education members; persons ineligible to be members or superintendent; ineligibility for local boards of education; ineligibility for other elective offices.**

(a) No person shall be eligible for election as a member of a local board of education who is not a resident of the school district in which that person seeks election and of the election district which such person seeks to represent. Whenever there is in a portion of any county a local school system having a board of education of its own, receiving its pro rata of the public school fund directly from the State School Superintendent and having no dealings whatever with the local board, then the members of the board of such county shall be selected from that portion

of the county not embraced within the territory covered by such local system.

(b) Whenever a member of a local board of education moves that person's domicile from the district which that person represents, such person shall cease to be a member of such local board of education, and a vacancy shall occur. The member shall provide notice of such move to the secretary of the local board of education and the election superintendent within ten days of such move.

(c)(1) No person serving on the governing body of a private elementary or secondary educational institution shall be eligible to serve as a member of a local board of education.

(2) No person employed by a local board of education shall be eligible to serve as a member of that board of education.

(3) No person employed by the Department of Education or serving as a member of the State Board of Education shall be eligible to serve as a member of a local board of education.

(4)(A) No person who has an immediate family member sitting on a local board of education or serving as the local school superintendent or as a principal, assistant principal, or system administrative staff in the local school system shall be eligible to serve as a member of such local board of education. As used in this paragraph, the term "immediate family member" means a spouse, child, sibling, or parent or the spouse of a child, sibling, or parent whose employment as the local school superintendent or as a principal, assistant principal, or system administrative staff in the local school system began on or after January 1, 2010. This paragraph shall apply only to local board of education members elected or appointed on or after July 1, 2009. Nothing in this Code section shall affect the employment of any person who is employed by a local school system on or before July 1, 2009, or who is employed by a local school system when an immediate family member becomes a local board of education member for that school system.

(B) Notwithstanding subsection (b) of Code Section 20-2-244, in local school systems in which the initial fall enrollment count conducted in 2009 pursuant to Code Section 20-2-160 does not exceed a full-time equivalent count of 2,800, the State Board of Education shall be authorized to waive this paragraph upon the request of a local board of education or an individual attempting to qualify to run for local board of education member and in accordance with the provisions of subsections (d) and (e) of Code Section 20-2-244; provided, however, that prior to submitting any such request, the local board of education shall, upon its own initiative,

or at the request of such individual attempting to qualify to run for local board of education member:

(i) Provide 30 days' notice of the individual's intent to run for office; and

(ii) Conduct a public hearing for the purpose of providing an opportunity for full discussion and public input on the issue of potential nepotism problems and other concerns with regard to such waiver. The public hearing shall be advertised at least seven days prior to the date of such hearing in a local newspaper of general circulation which shall be the same newspaper in which other legal announcements of the local board of education are advertised. The public hearing may be conducted in conjunction with a regular or called meeting of the local board or may be conducted independently, at the local board's discretion.

The cost of such notice and public hearing shall be borne by the local board. The State Board of Education shall approve or deny a waiver request no later than 45 days after receipt of such waiver request, taking into consideration whether the benefit to the public would justify approval of the waiver. An approved waiver must be received by the local election superintendent prior to an individual's filing of a declaration or notice of candidacy in accordance with Article 4 of Chapter 2 of Title 21.

(d) In all counties of this state having a population of not less than 500,000 or more than 600,000 according to the United States decennial census of 1990 or any future such census, the members of the county boards of education taking office after December 1, 1975, shall not hold any other elective governmental office. If any member of any such board should qualify at any time after December 1, 1975, for nomination or election to any other elective governmental office other than for membership on such county board, such member's position on such county board shall thereby become vacant. Such vacancy shall be filled as provided by the law applicable to any such county board.

(e) In addition to any other requirements provided by law, no person shall be eligible for election as a member of a local board of education unless he or she:

(1) Has read and understands the code of ethics and the conflict of interest provisions applicable to members of local boards of education and has agreed to abide by them; and

(2) Has agreed to annually disclose compliance with the State Board of Education's policy on training for members of local boards of education, the code of ethics of the local board of education, and the conflict of interest provisions applicable to members of local boards of education.



Each person offering his or her candidacy for election as a member of a local board of education shall file an affidavit with the officer before whom such person has qualified for such election prior to or at the time of qualifying, which affidavit shall affirm that he or she meets all of the qualifications required pursuant to this subsection. This subsection shall apply only to local board of education members elected or appointed on or after July 1, 2010.

(f) No person who is on the National Sex Offender Registry or the state sexual offender registry shall be eligible for election to or service on a local board of education. (Ga. L. 1919, p. 288, § 77; Code 1933, § 32-902; Ga. L. 1953, Nov.-Dec. Sess., p. 334, § 1; Code 1933, § 32-903.1, enacted by Ga. L. 1972, p. 236, §§ 1, 2; Code 1933, § 32-903.2, enacted by Ga. L. 1975, p. 828, § 1; Ga. L. 1981, p. 602, § 1; Ga. L. 1981, p. 1549, §§ 1, 2; Ga. L. 1982, p. 2107, § 17; Ga. L. 1983, p. 3, §§ 16, 53; Ga. L. 1984, p. 22, § 20; Ga. L. 1989, p. 425, § 1; Ga. L. 1992, p. 2339, § 1; Ga. L. 1993, p. 1279, § 1; Ga. L. 2009, p. 367, § 1/SB 14; Ga. L. 2009, p. 782, § 2/HB 251; Ga. L. 2010, p. 452, § 2/SB 84; Ga. L. 2011, p. 752, § 20/HB 142.)

**The 2010 amendment**, effective July 1, 2010, added the last sentence in subsection (b); in paragraph (c)(1), deleted “employed by or” following “No person”, and inserted “elementary or secondary”; re-wrote subsection (c); added present subsection (e); and redesignated former subsection (e) as present subsection (f).

**The 2011 amendment**, effective May

13, 2011, part of an Act to revise, modernize, and correct the Code, revised punctuation in the first sentence of subparagraph (c)(4)(A).

**Law reviews.** — For survey article citing developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

## JUDICIAL DECISIONS

**Editor’s notes.** — Some of the cases cited below were decided prior to the 1993 amendment of this Code section. Under the former version, school board members were selected by the grand jury.

**Section is on its face a general law unaffected by unreasonable classification.** Gibson v. Hood, 185 Ga. 426, 195 S.E. 444 (1938) (decided under version prior to 1993 amendment).

**Section is not unconstitutional on the statute’s face.** — Georgia’s constitutional and statutory scheme for selecting its grand juries and boards of education is not inherently unfair, or necessarily incapable of administration without regard to race; the federal courts are not powerless to remedy unconstitutional departures from Georgia law by declaratory and injunctive relief. Turner v. Fouche, 396 U.S.

346, 90 S. Ct. 532, 24 L. Ed. 2d 567 (1970) (decided under version prior to 1993 amendment).

**Limitation of school board membership to freeholders violated the equal protection clause of the Fourteenth Amendment.** Turner v. Fouche, 396 U.S. 346, 90 S. Ct. 532, 24 L. Ed. 2d 567 (1970) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 334 and prior to amendment by Ga. L. 1983, p. 3).

**Purpose of this section** is to insure that members of the respective county boards of education will not be hindered by conflicting interests or loyalties in achieving for their counties the best possible educational facilities. Turner v. Lashley, 239 Ga. 678, 238 S.E.2d 371 (1977) (see O.C.G.A. § 20-2-51; decided under version prior to 1993 amendment).

**Section does not exclude “unexpired terms” filled by election in event of resignation.** — This section expressly provides “terms” of tenure of office for the members of the county boards and is not to be construed as excluding “unexpired terms” to be filled by the election of another in the event of resignation of an incumbent. In the event of such an election of a successor, the succession would be for the remainder of the period the predecessor would have served had the member not resigned. *Fulford v. Colston*, 193 Ga. 893, 20 S.E.2d 579 (1942) (see O.C.G.A. § 20-2-51; decided under version prior to 1993 amendment).

**Not subject to strict scrutiny standard of review.** — Strict scrutiny review should not have been applied to plaintiff school board members’ challenges under the First and Fourteenth Amendments to O.C.G.A. § 20-2-51(c)(2) because the statute’s nepotism provision prohibited plaintiffs only from running for the school board in districts where certain family members were employed, but the statute did not otherwise impair plaintiffs’ right to run for office or to vote; plaintiffs’ injury was not so severe as to require strict scrutiny. Plaintiffs’ claims that the statute was both too narrow and overbroad also failed; that the statute did not prevent

nepotism in all its possible forms did not heighten the severity of the restriction to necessitate strict scrutiny. *Grizzle v. Kemp*, 634 F.3d 1314 (11th Cir. 2011).

**Vocational technical school is not sufficient conflict of interest to bar membership on county board of education** because it is considered to be an institution above the high school level. *Turner v. Lashley*, 239 Ga. 678, 238 S.E.2d 371 (1977) (decided under version prior to 1993 amendment).

**1872 Education Act not racially discriminatory.** — 1872 Education Act (Ga. L. 1872, p. 64) authorizing grand jury selection of county boards of education was not adopted with a racially discriminatory purpose. *Vereen v. Ben Hill County*, 743 F. Supp. 864 (M.D. Ga. 1990) (decided under version prior to 1993 amendment).

**School board officials related to school employees.** — Neither the “constitutional trust” provision (Ga. Const. 1983, Art I, Sec. II, Para. I) nor the Education Code (O.C.G.A. § 20-1-1 et seq.) presume that elected school board officials whose family members are employed by the local school system act in violation of their public duty merely by participating in decisions affecting school operations. *Ianicelli v. McNeely*, 272 Ga. 234, 527 S.E.2d 189 (2000).

**Cited in** *McCollum v. Bass*, 201 Ga. 537, 40 S.E.2d 650 (1946).

## OPINIONS OF THE ATTORNEY GENERAL

**Editor’s notes.** — Some of the opinions cited below were rendered under the former version of this Code section prior to its 1993 amendment. Under the former version, school board members were selected by the grand jury.

**Constitution supersedes statutory terms.** — To the extent that this provision conflicts with the constitutional provision on boards of education, the latter controls, but such conflict does not otherwise render other provisions contained in the Code invalid. 1960-61 Op. Att’y Gen. p. 151 (decided under version prior to 1993 amendment).

Ga. Const. 1945, Art. VIII, Sec. IX, Para. I (see now Ga. Const. 1983, Art. VIII, Sec. V, Paras. II and IV), to the extent that it conflicts with this section,

supersedes the terms thereof, and this section must be read in conjunction with and pursuant to the constitutional provision. 1960-61 Op. Att’y Gen. p. 155 (see O.C.G.A. § 20-2-51; decided under version prior to 1993 amendment).

**Grand jury empowered to fix terms of first appointees after adoption of 1945 Constitution.** — Grand jury of the county is clothed with the power to fix the beginning and ending of the term of the first appointees made after the adoption of the 1945 Constitution and thereafter all subsequent terms are to conform with the beginning of the term of the first appointee. 1960-61 Op. Att’y Gen. p. 155 (decided under version prior to 1993 amendment).

**Residency requirements for the election of local school board members cannot**



be established by board bylaws. 1997 Op. Att'y Gen. No. U97-25.

**Members-elect cannot enter upon duties until qualified, commissioned, and administered appropriate oaths.** — Members-elect of a local board of education shall not enter upon the duties of office until the members are qualified, commissioned, and administered the appropriate oaths. An incumbent board member who has been reelected or reappointed may continue to serve as an official member of the board prior to receiving the commission and being administered the appropriate oaths for the new term. 1975 Op. Att'y Gen. No. 75-15 (decided under version prior to 1993 amendment).

**As local board members are public officers, their terms shall continue until successors are commissioned.** 1975 Op. Att'y Gen. No. 75-15 (decided under version prior to 1993 amendment).

**When grand jury fails to make appointment, member continues until successor selected.** — When the local grand jury fails to make an appointment to fill the office of a member of the county board of education whose term has expired, if the member has not resigned, the member continues to be a member of the county board of education until a successor is selected and qualified. 1958-59 Op. Att'y Gen. p. 107 (decided under version prior to 1993 amendment).

**Citizen-resident of independent district qualified to select county board member.** — Citizen-resident of an independent school district is not disqualified from participating in the selection of a member of a county board of education by a grand jury of which the citizen-resident is a member. 1960-61 Op. Att'y Gen. p. 151 (decided under version prior to 1993 amendment).

**No person employed by or serving on other board may serve on county board.** — No person employed by or serving as a member of the board of any other public school system may serve as a member of a county board of education. 1974 Op. Att'y Gen. No. U74-69 (decided under version prior to 1993 amendment).

**No employee of state department or county board may serve on county board.** — Neither an employee of the State Department of Education or of a county board of education is eligible for membership on the county board of education. 1974 Op. Att'y Gen. No. U74-69 (decided under version prior to 1993 amendment).

**Principal or school teacher in elementary school could be candidate for county board of education.** 1958-59 Op. Att'y Gen. p. 140 (decided under version prior to 1993 amendment).

**Teacher may serve as a county commissioner** unless prohibited by a local law or unless a local circumstance would allow the commission to affect the pay or other conditions of employment of teachers. 1999 Op. Att'y Gen. No. U99-3.

**Members of a county board may be employed by a separate school system** even if the board contracts with that system for use of the county's middle and high schools. 1999 Op. Att'y Gen. No. U99-7.

**Local board member is required to take an oath** affirming that the member is not the holder of public money due this state, that the member is not the holder of an office of the United States or of any one of the several states, that the member is otherwise qualified to hold office, that the member meets the residency requirements for office, and that the member will support the Constitution of the United States and of this state. Until the member takes that oath a local board member is not to enter upon the duties of that office. 1975 Op. Att'y Gen. No. 75-15 (decided under version prior to 1993 amendment).

**Vacation equivalent of failed election.** — Vacancy in a county board of education, which resulted from a quo warranto action and determination that a board member was ineligible at the time the member was elected and sworn in and continues to be ineligible to hold that office, is the equivalent of a failed election and must be filled by special election under former Code 1933, § 34-1514. 1980 Op. Att'y Gen. No. 80-60 (decided under version prior to 1993 amendment).



## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 67 et seq.

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 94, 95, 124 et seq.

**ALR.** — Right of school teacher to serve as member of school board in school district where employed, 70 ALR3d 1188.

Applicability and application of § 2 of Voting Rights Act of 1965 (42 USCS § 1973) to members of school board, 105 ALR Fed. 254.

## 20-2-52. Term of office; number of members; staggering of terms.

(a) Effective January 1, 2012, members of local boards of education shall be elected for terms of not less than four years, provided that longer terms of office may be provided by local Act or constitutional amendment.

(b)(1) Each local board of education shall have no more than seven members as provided by local Act.

(2) This subsection shall not apply to a local board of education whose board size exceeds seven members as provided by local constitutional amendment or federal court order or pursuant to a local law in effect prior to July 1, 2010; provided, however, that if the local law of any such local board of education is amended to revise the number of members on such board, paragraph (1) of this subsection shall apply.

(c) Members of local boards of education in office on July 1, 2011, who are serving terms of office of less than four years shall serve until December 31, 2012, and until their respective successors are elected and qualified. Members elected in 2011 shall serve until December 31, 2014, and until their respective successors are elected and qualified. Successors to all such members shall be elected to serve four-year terms of office and until their respective successors are elected and qualified.

(d) The General Assembly, by local law, may provide for staggered terms of office and term limits for such offices. On and after January 1, 2015, the General Assembly by local law may provide for terms of less than four years for members of local boards of education. (Ga. L. 1919, p. 288, § 78; Code 1933, § 32-903; Ga. L. 1965, p. 124, § 1; Ga. L. 1992, p. 6, § 20; Ga. L. 1993, p. 1279, § 2; Ga. L. 2010, p. 452, § 3/SB 84; Ga. L. 2011, p. 26, § 1/SB 79.)

**The 2010 amendment**, effective July 1, 2010, designated the existing provisions as subsection (a), and added subsection (b).

**The 2011 amendment**, effective April 20, 2011, in subsection (a), substituted “Effective January 1, 2012, members” for

“Members” at the beginning, inserted “not less than” near the middle, and substituted “, provided that longer terms of office may be provided” for “unless their terms are otherwise provided” near the end; and added subsections (c) and (d).

**Editor’s notes.** — Ga. L. 2011, p. 26,

§ 4/SB 79, not codified by the General Assembly, provides: "If a local school system or school is placed on the level of accreditation immediately preceding loss of accreditation on or after July 1, 2010, but prior to the effective date of this Act, local board of education members elected or appointed on or after July 1, 2010, but prior to the effective date of this Act shall be subject to the provisions of Code Section 20-2-73 as they existed on the day prior to April 20, 2011."

Ga. L. 2011, p. 26, § 5/SB 79, not codi-

fied by the General Assembly, provides: "The Attorney General of Georgia shall cause Section 3 of this Act to be submitted for preclearance under the federal Voting Rights Act of 1965, as amended, and such submission shall be made to the United States Department of Justice or filed with the appropriate court no later than 45 days after the date on which this Act is approved by the Governor or becomes law without such approval." The Governor approved this Act on April 20, 2011.

### JUDICIAL DECISIONS

**Applicability.** — The Telfair County Tenure Law, Ga. L. 1963, p. 705, did not limit the terms a school board member could serve because although it is a local constitutional amendment, it does not ap-

ply to Ga. Const. 1983, Art. VIII and thus, does not apply to school board members. *Dyal v. Pope*, 283 Ga. 463, 660 S.E.2d 725 (2008).

### OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — Some of the opinions cited below were rendered under former versions of this Code section.

**Section remains in force and effect after the adoption of the 1945 Constitution** because it does not conflict with the Constitution. 1945-47 Op. Att'y Gen. p. 148 (decided under version prior to 1993 amendment).

**Constitutional provision controls.** — To the extent this provision conflicts with the constitutional provision on boards of education, the latter controls, but such conflict does not otherwise render other provisions contained in the Code invalid. 1960-61 Op. Att'y Gen. p. 151 (decided under version prior to 1993 amendment).

**Section not relevant to elected school boards.** — O.C.G.A. § 20-2-52 would appear to relate only to school boards appointed by grand juries and not to elected school boards. In any event, the relocation of an elected member of the Fayette county board of education to another district within Fayette county after taking office would not create a vacancy in the office which the member holds. 1988 Op. Att'y Gen. No. U88-35 (decided under version prior to 1993 amendment).

**Enlargement of nonresidency qualification requirements by local law**

**unconstitutional.** — If an attempt were made to enlarge the qualification requirements (other than residence requirements) by local law, there would be a violation of Ga. Const. 1945, Art. I, Sec. IV, Para. I (see now Ga. Const. 1983, Art. III, Sec. VI, Para. IV) which prohibits special legislation in cases where provision has been made by existing general law. 1972 Op. Att'y Gen. No. U72-103 (decided under version prior to 1993 amendment).

**If county has four districts, one member selected at large.** — When a county has four districts, one member of the county board of education should be selected from the county at large. 1945-47 Op. Att'y Gen. p. 146 (decided under Ga. L. 1919, p. 288 prior to amendment by Ga. L. 1965, p. 124).

**Grand jury may not select two members of the board from same district or locality.** 1945-47 Op. Att'y Gen. p. 143 (decided under Ga. L. 1919, p. 288 prior to amendment by Ga. L. 1965, p. 124).

Constitution does not supersede this section so as to authorize a grand jury to elect more than one member of a county board of education from any one militia district. 1952-53 Op. Att'y Gen. p. 63 (decided under Ga. L. 1919, p. 288 prior to amendment by Ga. L. 1965, p. 124).

**Member of the legislature may serve as a member of a county board of education.** 1948-49 Op. Att’y Gen. p. 582 (decided under version prior to 1993 amendment).

**Principal or school teacher in elementary school could be candidate for county board of education.** 1958-59 Op. Att’y Gen. p. 140 (decided under version prior to 1993 amendment).

**Board members selected from area**

**not within independent school district.** — It is clear from the Constitution and this section that members of the county board of education shall be selected from that portion of the county not embraced within the territory of an independent school district. 1948-49 Op. Att’y Gen. p. 510 (see O.C.G.A. § 20-2-52; decided under version prior to 1993 amendment).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 68, 69.

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 94, 95, 128 et seq.

**ALR.** — Right of school teacher to serve as member of school board in school district where employed, 70 ALR3d 1188.

### **20-2-52.1. Composition and election of county boards of education in counties in which there is a homestead option sales and use tax and a county sales and use tax for educational purposes; terms of service.**

(a) On and after January 1, 2015, in counties in which there is being collected a homestead option sales and use tax pursuant to Article 2A of Chapter 8 of Title 48 and a county sales and use tax for educational purposes pursuant to Part 2 of Article 3 of Chapter 8 of Title 48 and the county board of education consists of more than seven members, such county boards of education shall comply with this Code section. Such county boards of education shall consist of seven members elected from single-member districts of approximately equal population. The number of members may be reduced to less than seven members by local legislation, but such members shall be elected from single-member districts of approximately equal population.

(b) Unless otherwise provided by local law, such county boards of education shall select from among their membership a chairperson and vice chairperson at the first meeting of each odd-numbered year.

(c) Unless otherwise provided by local law, such county boards of education shall serve staggered, four-year terms of office. (Code 1981, § 20-2-52.1, enacted by Ga. L. 2011, p. 26, § 2/SB 79; Ga. L. 2012, p. 1133, § 1/SB 412.)

**Effective date.** — This Code section became effective April 20, 2011.

**The 2012 amendment,** effective May 2, 2012, substituted “January 1, 2015” for “January 1, 2013” near the beginning of subsection (a).

**Editor’s notes.** — Ga. L. 2011, p. 26, § 4/SB 79, not codified by the General Assembly, provides: “If a local school system or school is placed on the level of accreditation immediately preceding loss of accreditation on or after July 1, 2010,



but prior to the effective date of this Act, local board of education members elected or appointed on or after July 1, 2010, but prior to the effective date of this Act shall be subject to the provisions of Code Section 20-2-73 as they existed on the day prior to April 20, 2011.”

Ga. L. 2011, p. 26, § 5/SB 79, not codified by the General Assembly, provides: “The Attorney General of Georgia shall

cause Section 3 of this Act to be submitted for preclearance under the federal Voting Rights Act of 1965, as amended, and such submission shall be made to the United States Department of Justice or filed with the appropriate court no later than 45 days after the date on which this Act is approved by the Governor or becomes law without such approval.” The Governor approved this Act on April 20, 2011.

## **20-2-53. Certifying election or appointment of county board members.**

In addition to certifications of elections now required to be made to the Governor, it shall be the duty of the elections superintendent of each system or other political subdivision to transmit to the Secretary of State and to the State School Superintendent a certified statement of the election of members of a local board of education. Where board members are appointed under any law to fill vacancies, it shall be the duty of the local superintendent of schools to certify these appointments to the Secretary of State, the State School Superintendent, and to the Governor. All resignations from such boards, in addition to being submitted to the Governor, shall be submitted to the local superintendent of schools and a copy thereof shall be transmitted to the Secretary of State and to the State School Superintendent. (Ga. L. 1919, p. 288, § 80; Code 1933, § 32-905; Ga. L. 1982, p. 1175, § 1; Ga. L. 1983, p. 3, § 16; Ga. L. 1993, p. 1279, § 3.)

## **JUDICIAL DECISIONS**

**Editor’s notes.** — Some of the cases cited below were decided under a former version of this Code section prior to its 1993 amendment.

**Section is not unconstitutional on its face.** *Turner v. Fouche*, 396 U.S. 346, 90 S. Ct. 532, 24 L. Ed. 2d 567 (1970) (see O.C.G.A. § 20-2-53; decided under prior law).

**Issuance of commission.** — Issuance of commission to one elected or appointed to county board is a ministerial act, and is

not conclusive of the right of the person so commissioned to hold the office to which the person has been elected or appointed, and the writ of injunction will not lie to prevent the issuance of a commission to such a person by the proper officials. *Hobbs v. Peavy*, 210 Ga. 671, 82 S.E.2d 224 (1954) (decided under prior law).

**Cited in** *McCullum v. Bass*, 201 Ga. 537, 40 S.E.2d 650 (1946); *State v. Walker*, 209 Ga. 523, 74 S.E.2d 461 (1953).

## **OPINIONS OF THE ATTORNEY GENERAL**

**Members-elect of board shall not enter upon duties until qualified, commissioned, and administered appropriate oaths.** — An incumbent board

member who has been reelected or reappointed may continue to serve as an official member of the board prior to receiving the commission and being administered

the appropriate oaths for the new term. 1975 Op. Att’y Gen. No. 75-15 (decided under prior law).

**When certified statement regarding selection insufficient, inquiry made of clerk for additional information.** — When the certified statement of facts regarding the election or appointment of a member of a county board of education forwarded by the clerk of the superior

court to the State School Superintendent is insufficient to enable the Secretary of State to properly prepare a commission for the Governor’s signature, appropriate inquiry should be made of the clerk and additional information submitted by the clerk through established channels. 1954-56 Op. Att’y Gen. p. 178 (decided under prior law).

RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, Districts, §§ 94, 95, 124 et seq., 135 et seq. § 71.  
**C.J.S.** — 78 C.J.S., Schools and School

**20-2-54. Resignation of member of county board or superintendent.**

Repealed by Ga. L. 1986, p. 996, § 3, effective July 1, 1986.

**Editor’s notes.** — This Code section Code 1933, § 32-906; and Ga. L. 1981, p. was based on Ga. L. 1919, p. 288, § 81; 643, § 1.

**20-2-54.1. Procedure for filling vacancies on local boards.**

(a) In all instances where local laws applicable to local boards of education do not provide otherwise, a vacancy occurring for any reason on a local board of education shall be filled as follows:

- (1) If the vacancy occurs more than 90 days prior to the date of a general election preceding the general election at which a successor will be elected to a new full term of office, then such vacancy shall be filled for the unexpired term of office at a special election to be held on the same date as said general election preceding the general election at which a successor will be elected to a new full term of office; and in this case the remaining members of the board of education shall, by majority vote, select a qualified person to fill the vacancy until the person elected at such special election takes office; and
- (2) If the vacancy does not occur more than 90 days prior to the date of a general election preceding the general election at which a successor will be elected to a new full term of office, then the remaining members of the local board of education shall, by majority vote, select a qualified person to serve for the remainder of the unexpired term.

(b) Any person elected or appointed to fill a vacancy pursuant to subsection (a) of this Code section shall possess the same qualifications required for election to a full term of office as provided by law applicable

to the office wherein the vacancy occurred. As applied to special elections under paragraph (1) of subsection (a) of this Code section, if the office wherein the vacancy occurred is filled by election of voters within a portion of the local school district, then the special election shall be held within that portion of the local school district, but if the office wherein the vacancy occurred is filled by the voters within the entire school district, then the special election shall be held within the entire school district. (Code 1981, § 20-2-54.1, enacted by Ga. L. 1984, p. 641, § 1; Ga. L. 1985, p. 149, § 20; Ga. L. 1990, p. 1261, § 1; Ga. L. 1991, p. 94, § 20; Ga. L. 1993, p. 1279, § 4.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1993, “paragraph (1) of subsection (a)” was substi-

tuted for “subparagraph (a)(1)(A)” in the second sentence of subsection (b).

### OPINIONS OF THE ATTORNEY GENERAL

**Filling vacancy in recall situations.** — Former O.C.G.A. §§ 21-4-11 and 21-4-12(g) (now O.C.G.A. §§ 21-4-12 and 21-4-13(g), respectively) govern the manner of filling a vacancy on a county school board created by the resignation of a member of the county school board subsequent to the filing of an application for a

recall petition, but prior to a recall election, or as a result of a recall election, respectively. 1985 Op. Att’y Gen. No. 85-46 (rendered prior to 1989 repeal and reenactment of T. 21, Ch. 4, which now provides for filling a vacancy by means of a special election).

### 20-2-55. Per diem, insurance, and expenses of local board members.

(a)(1) In any local school system for which no local Act is passed, members of the local board of education shall, when approved by the local board affected, receive a per diem of \$50.00 for each day of attendance at meetings of the board and while meeting and traveling within or outside the state as a member of a committee of the board on official business first authorized by a majority of the board, plus reimbursement for actual expenses necessarily incurred in connection therewith; provided, however, that in any independent school system with a full-time equivalent (FTE) program count of less than 4,000 students for which no local Act is passed, members of the local board of education may, when approved by the affected local board, receive a per diem of not less than \$50.00 and not more than \$100.00 for each day of attendance at meetings of the board and while meeting and traveling within or outside the state as a member of a committee of the board, plus reimbursement for actual expenses. The accounts for such service and expenses shall be submitted for approval to the local school superintendent. In all school districts, the compensation of members of local boards shall be paid only from the local tax funds available to local boards for educational purposes.



This paragraph shall apply only to local board of education members elected or appointed prior to July 1, 2010.

(2) In any local school system for which no local Act is passed, members of the local board of education shall, when approved by the local board affected, receive a per diem of \$50.00 for each day of attendance at a meeting, as defined in paragraph (3) of subsection (a) of Code Section 50-14-1, of the board, plus reimbursement for actual expenses necessarily incurred in connection therewith; provided, however, that in any independent school system with a full-time equivalent (FTE) program count of less than 4,000 students for which no local Act is passed, members of the local board of education may, when approved by the affected local board, receive a per diem of not less than \$50.00 and not more than \$100.00 for each day of attendance at a meeting, as defined in paragraph (3) of subsection (a) of Code Section 50-14-1, of the board, plus reimbursement for actual expenses. The accounts for such service and expenses shall be submitted for approval to the local school superintendent. In all school districts, the compensation of members of local boards shall be paid only from the local tax funds available to local boards for educational purposes. This paragraph shall apply only to local board of education members elected or appointed on or after July 1, 2010.

(b)(1) A local board of education is authorized to provide group medical and dental insurance for its members who elect to participate. Such insurance may be provided through a group policy secured by the local school district, a group policy secured by several local school districts, a policy secured by an organization of local school boards, or in accordance with Code Section 45-18-5 providing for the inclusion of members of the local board of education and their spouses and dependents within any health insurance plan or plans established under Article 1 of Chapter 18 of Title 45. It shall be the duty of the board to make the employer contributions required for the operation of such plan or plans. Except as provided in paragraph (3) of this subsection, a board providing such insurance shall pay no greater percentage of the cost of that insurance than the percentage of the cost paid as an employer contribution by the state for the health insurance plan for state employees pursuant to Article 1 of Chapter 18 of Title 45. The remainder of such insurance costs, and all the costs of any coverage for family members, shall be paid as an employee contribution by the board member. It shall be the duty of the board to deduct from the salary or other remuneration of qualified members or otherwise collect such payment from the qualified members or dependents.

(2) Taxes levied by or on behalf of a local board of education may be expended for employer contributions, but not employee contributions,

required for insurance coverage of members of that board as provided in paragraph (1) of this subsection. Taxes levied by or on behalf of a local board of education also may be expended for contributions authorized in paragraph (3) of this subsection. Such expenditures on behalf of any member may continue only as long as that member continues in office and makes any employee contribution required for such coverage. That member, and eligible dependents thereof, shall be ineligible for coverage pursuant to the provisions of paragraph (1) of this subsection upon such person's ceasing to serve as a member of a local board of education. Such expenditures on behalf of any member in accordance with paragraph (3) of this subsection may continue only as long as that member continues in office and makes any contribution which is not the result of the board of education's decision to allow its members to participate in the health insurance plan. Expenditures authorized by this Code section shall be in addition to, and not in lieu of, any salary, expense, per diem, or other compensation payable to that member of a local board of education.

(3) If a board member is already a member of a health insurance plan established by Article 1 of Chapter 18 of Title 45 as a retired employee and the result of the board of education's decision to allow its members to participate is to establish dual eligibility for a member and thus to increase the cost to such member of the state insurance plan, then the local board may pay any additional cost imposed on such member as a result of the local board's decision to allow its members to participate in coverage under paragraph (1) of this subsection. (Ga. L. 1919, p. 288, § 79; Code 1933, § 32-904; Ga. L. 1943, p. 270, § 1; Ga. L. 1957, p. 648, §§ 1, 2; Ga. L. 1959, p. 231, § 1; Ga. L. 1963, p. 279, § 1; Ga. L. 1966, p. 447, § 1; Ga. L. 1978, p. 1446, § 1; Ga. L. 1981, p. 529, § 1; Ga. L. 1982, p. 934, §§ 1, 2; Ga. L. 1983, p. 3, § 53; Ga. L. 1989, p. 685, § 1; Ga. L. 1992, p. 1010, § 1; Ga. L. 1993, p. 1279, § 5; Ga. L. 1994, p. 782, § 3; Ga. L. 1999, p. 813, § 1; Ga. L. 2001, p. 1071, § 1; Ga. L. 2002, p. 841, § 1; Ga. L. 2010, p. 452, § 4/SB 84; Ga. L. 2012, p. 218, § 5/HB 397.)

**The 2010 amendment**, effective July 1, 2010, designated the existing provisions of subsection (a) as paragraph (a)(1); added the last sentence in paragraph (a)(1); and added paragraph (a)(2).

**The 2012 amendment**, effective April 17, 2012, in the first sentence of paragraph (a)(2), twice substituted "paragraph (3)" for "paragraph (2)".

**Cross references.** — Compensation of school board members, Ga. Const. 1983, Art. VIII, Sec. V, Para. II.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1993, "para-

graph (1) of this subsection" was substituted for "subsection (b) of this Code section" in paragraph (b)(2).

**Editor's notes.** — Ga. L. 1999, p. 813, § 3, not codified by the General Assembly, provides that: "Nothing herein shall be construed to allow county officials or local school board officials to be included in the state employee's health insurance plan except that the appropriate agencies of state government may provide administrative services, only, for county officials and local school officials participating in various plans."

**Administrative rules and regulations.** — Eligibility for coverage, Official Compilation of the Rules and Regulations

of the State of Georgia, Department of Community Health, State Health Benefit Plan, Sec. 111-4-1-.04.

### OPINIONS OF THE ATTORNEY GENERAL

**Local board cannot establish program of self-insurance for itself.** — While a local board of education could establish a program of self-insurance to cover the deductible portion of any liability imposed upon the board's officers, or

employees, the board could not do so for itself and would be limited to the protection expressly authorized by Ga. L. 1975, p. 1181, § 1. 1977 Op. Att'y Gen. No. 77-61.

### RESEARCH REFERENCES

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 94, 95, 133, 134.

### 20-2-56. Nonpartisan elections for members of boards of education.

Notwithstanding any other provision of law to the contrary, the General Assembly may provide by local law for the election in nonpartisan elections of candidates to fill the offices of members of boards of education and, in the case of independent school systems, for the election in nonpartisan elections of candidates to fill the offices of members of the boards of education of those independent school systems using the procedures established in Chapter 2 of Title 21, the "Georgia Election Code." (Code 1981, § 20-2-56, enacted by Ga. L. 1993, p. 1279, § 6; Ga. L. 1995, p. 1027, § 1; Ga. L. 1998, p. 295, § 3; Ga. L. 2001, p. 269, § 2; Ga. L. 2005, p. 60, § 20/HB 95.)

**Editor's notes.** — Former Code Section 20-2-56, pertaining to workshops for new members of county and other boards, was based on Ga. L. 1977, p. 711, § 1 and was repealed by Ga. L. 1985, p. 1657, § 2, effective July 1, 1986.

**Law reviews.** — For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 96 (2001).

### 20-2-57. Organization of county boards; chairperson and secretary; quorum; record of proceedings.

(a) Unless otherwise provided by local law or, in the absence of local law, by local board policy, upon being called together by one of their number, the members of the local board shall organize by selecting one of their number as chairperson to serve as such during the term for which that person was chosen as a member of the local board. The local school superintendent shall act as secretary of the local board, ex officio. A majority of the local board shall constitute a quorum for the transaction of business. The votes of a majority of the members present



shall be necessary for the transaction of any business or discharge of any duties of the local board of education, provided there is a quorum present. Any action taken by less than a majority of the board members may be rescinded by a majority of the board members at the next regular meeting or within 30 days of such action, whichever is later. It shall be the duty of the superintendent as secretary to be present at the meetings of the local board, to keep the minutes of its meetings and make a permanent record of them, and to do any other clerical work it may direct the superintendent to do. The superintendent shall cause to be recorded in a book, to be provided for the purpose, all official proceedings of the local board, which shall be a public record open to the inspection of any person interested therein; and all such proceedings, when so recorded, shall be signed by the chairperson and countersigned by the secretary.

(b) Pursuant to the authority of this subsection, any local board of education whose chairperson is required to be a member of that board who is elected at large from its school district, when such requirement is imposed by the terms of a local law which became effective before this subsection may become effective under the Voting Rights Act of 1965, as amended, shall continue to have as its chairperson that same member who is elected at large as designated by that local law, unless thereafter changed by local law. (Ga. L. 1919, p. 288, §§ 82, 88; Code 1933, §§ 32-907, 32-912; Ga. L. 1956, p. 747, § 1; Ga. L. 1965, p. 370, § 1; Ga. L. 1974, p. 1104, § 2; Ga. L. 1982, p. 2107, § 18; Ga. L. 1984, p. 22, § 20; Ga. L. 1985, p. 467, § 1; Ga. L. 1991, p. 406, § 1; Ga. L. 1992, p. 1010, § 2; Ga. L. 1993, p. 1279, § 7; Ga. L. 1994, p. 97, § 20; Ga. L. 1994, p. 1936, § 2.5; Ga. L. 2010, p. 452, § 5/SB 84.)

**The 2010 amendment**, effective July 1, 2010, twice deleted “or the board’s nominee” following “superintendent” and substituted “cause to be recorded” for “record” in the seventh sentence of subsection (a).

**Law reviews.** — For note on the 1994 amendment of this Code section, see 11 Ga. St. U. L. Rev. 184 (1994).

## JUDICIAL DECISIONS

**Local act providing for selection of chair of board of education was unconstitutional bill of attainder.** — H.B. 563 was an unconstitutional bill of attainder under Ga. Const. 1983, Art. I, Sec. I, Para. X as applied to the chairperson of the Randolph County Board of Education because prior to the passage of the bill, the chairperson’s term was not set to expire until December 31, 2010, but the bill operated to cut short the chairperson’s four-year term that had previously been established by O.C.G.A. § 20-2-57(a) and

local board policy. *Cook v. Smith*, 288 Ga. 409, 705 S.E.2d 847 (2010).

**Superintendent not authorized to disclaim title to property vested in board.** — Authority given to the superintendent by former Code 1933, §§ 32-907, 32-912, and 32-1009 to act as an agent for the county school board did not include any authority to disclaim title to property vested in the board as public trustees. *Ingram v. Doss*, 217 Ga. 645, 124 S.E.2d 87 (1962).

**Neither minutes nor signing**

**thereof prerequisite condition to borrowing money.** — Neither the record on the minutes of the board of its resolution to borrow money, nor the signing of the minutes by the president (now the chair), is made a mandatory or prerequisite condition to the right to borrow money and execute notes for school purposes. *American Sur. Co. v. Citizens' Bank*, 48 Ga. App. 448, 172 S.E. 801 (1934), *aff'd*, 180 Ga. 827, 180 S.E. 635 (1935).

**Official immunity upheld.** — Trial court properly granted summary judgment to a county school board and the board's superintendent in a parents' negligence action arising out of an attack on school grounds that injured their child as the board and the superintendent presented sufficient evidence that a school safety plan was in place at the elementary

school at the time the child was attacked, entitling the board and the superintendent to official immunity barring the parents' negligence claims. *Leake v. Murphy*, 284 Ga. App. 490, 644 S.E.2d 328 (2007), *cert. denied*, 2007 Ga. LEXIS 671 (Ga. 2007).

**Cited in** *American Sur. Co. v. Citizens' Bank*, 44 Ga. App. 57, 160 S.E. 546 (1931); *Marshall v. Walker*, 183 Ga. 44, 187 S.E. 81 (1936); *Guy v. Nelson*, 202 Ga. 728, 44 S.E.2d 775 (1947); *Mayor of Union Point v. Jones*, 88 Ga. App. 848, 78 S.E.2d 348 (1953); *Lilly v. Crisp County Sch. Sys.*, 117 Ga. App. 868, 162 S.E.2d 456 (1968); *Grimes v. Clark*, 226 Ga. 195, 173 S.E.2d 686 (1970); *Callaway v. Kirkland*, 320 F. Supp. 1135 (N.D. Ga. 1970); *Knight v. Troup County Bd. of Educ.*, 144 Ga. App. 634, 242 S.E.2d 263 (1978).

## OPINIONS OF THE ATTORNEY GENERAL

**Enlargement of nonresidency qualification requirements by local law unconstitutional.** — If an attempt were made to enlarge the qualification requirements (other than residence requirements) by local law, there would be a violation of Ga. Const. 1945, Art. I, Sec. IV, Para. I (see now Ga. Const. 1983, Art. III, Sec. VI, Para. IV) which prohibits special legislation in cases where provision has been made by existing general law. 1972 Op. Att'y Gen. No. U72-103.

**Chair of local board is entitled to vote in same manner as are other members.** 1962 Op. Att'y Gen. p. 146.

**Chair is a board member whose voice and vote must be considered to the same extent as any other member of the school board in determining whether or not the will of the board has been expressed or manifested.** 1963-65 Op. Att'y Gen. p. 568.

**Chair of board can cast a vote to make a tie on some issues before the board.** 1952-53 Op. Att'y Gen. p. 333.

**Chair of board may vote to make or break a tie on some issues before the board.** 1957 Op. Att'y Gen. p. 104.

**Absence of chair or secretary.** — Local board of education must organize itself in the manner set forth in O.C.G.A. §§ 20-2-57 and 20-2-58; however, the

board may select two of the board's members to serve temporarily in the absence of the chair or secretary and may designate the members as vice-chairs. 1987 Op. Att'y Gen. No. U87-9.

**County superintendent must of necessity be permitted to attend any official meeting of county board.** 1954-56 Op. Att'y Gen. p. 171.

**County superintendent may utilize stenographer or recording equipment at board meetings.** — While the county school superintendent may not delegate statutory responsibility for causing the minutes of a board meeting to be kept and made into a permanent record, the superintendent may, to better meet responsibilities in the matter, utilize the services of a stenographer, or, for that matter, any sort of recording equipment. 1973 Op. Att'y Gen. No. 73-172.

**Local policies adopted by a board of education** which do not appear to be the equivalent of "local laws" would not exempt the county board of education from following the requirements of O.C.G.A. § 20-2-57. The term "local law," which is also referred to as a "special law," refers to acts passed by the General Assembly which are designed to be territorially local, not permitting of application to any other county in the state. The local poli-

cies of the board of education cannot take precedence over the requirements of that section and the statute itself must control. 1991 Op. Att'y Gen. No. U91-3.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 74 et seq., 163.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 140 et seq.

**ALR.** — Necessity, sufficiency, and effect of minutes or record of meeting of school board, 12 ALR 235.

School thrift system, 49 ALR 712.

Libel and slander: privileged nature of statements or utterances by member of school board in course of official proceedings, 85 ALR3d 1137.

### 20-2-58. Regular monthly meeting of local boards; adjournment; temporary presiding officer; notice of date.

It shall be the duty of each local board of education to hold a regular meeting during each calendar month for the transaction of business pertaining to the public schools. Any such meeting may be adjourned from time to time, and, in the absence of the president or secretary, the members of the local board may appoint one of their own number to serve temporarily. The local board shall annually determine the date of its meeting and shall publish it either in the official county organ or, at the option of the local board of education, in a newspaper having a general circulation in said county at least equal to that of the official county organ for two consecutive weeks following the setting of the date; provided, however, that the date shall not be changed more often than once in 12 months and, if changed, the new date shall also be published as provided in this Code section. (Ga. L. 1919, p. 288, § 83; Code 1933, § 32-908; Ga. L. 1955, p. 625, § 1; Ga. L. 1973, p. 700, § 1; Ga. L. 1988, p. 612, § 2; Ga. L. 1991, p. 726, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1987, in the last sentence, a comma was deleted between "12 months" and "and" and a comma inserted between "and" and "if changed".

**Law reviews.** — For article, "The Amended Open Meetings Law: New Requirements for Publicly Funded Corporations As Well As Governmental Agencies," see 25 Ga. St. B.J. 78 (1988).

### OPINIONS OF THE ATTORNEY GENERAL

**Word "date" is to be construed to mean** the day of the week or month on which county board meetings are to be held and includes the time for such meetings. 1960-61 Op. Att'y Gen. p. 146.

**County superintendent must of necessity be permitted to attend any official meeting of county board.** 1954-56 Op. Att'y Gen. p. 171.

**Absence of chair or secretary.** — Local board of education must organize itself in the manner set forth in O.C.G.A. §§ 20-2-57 and 20-2-58; however, the board may select two of the board's members to serve temporarily in the absence of the chair or secretary and may designate the members as vice-chairs. 1987 Op. Att'y Gen. No. U87-9.



## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 74, 75.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 138 et seq.

**ALR.** — Libel and slander: Privileged nature of statements or utterances by member of school board in course of official proceedings, 85 ALR3d 1137.

### 20-2-58.1. “Immediate family” defined; employment of family members.

(a) As used in this Code section, the term “immediate family” means a spouse, child, sibling, or parent or the spouse of a child, sibling, or parent.

(b) No local board of education shall employ or promote any person who is a member of the immediate family of any board member unless a public, recorded vote is taken on such employment or promotion as a separate matter from any other personnel matter. Any board member whose immediate family member is being considered for employment shall not vote on such employment. Nothing in this Code section shall affect the employment of any person who is employed by a local school system on July 1, 2000, or who is employed by a local school system when an immediate family member becomes a member of the local board of education for that school system. (Code 1981, § 20-2-58.1, enacted by Ga. L. 2000, p. 618, § 6.)

**Editor’s notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and

may be cited as the ‘A Plus Education Reform Act of 2000.’”

### 20-2-59. Rules.

The county school superintendent and county board of education shall make rules to govern the county schools of their county. (Ga. L. 1919, p. 288, § 88; Code 1933, § 32-912; Ga. L. 1956, p. 747, § 1; Ga. L. 1974, p. 1104, § 2.)

## JUDICIAL DECISIONS

**Local school boards may constitutionally employ different methods to control educational quality.** — Since the Georgia Constitution and Code provide local school boards with sweeping authority in the governing of local school systems, the fact that other school boards may choose to employ other methods to control the quality of education in their systems does not evince a denial of equal

protection. *Wells v. Banks*, 153 Ga. App. 581, 266 S.E.2d 270 (1980).

**Local school boards must be restricted to powers expressly granted or necessarily implied by statute,** since their composition and function are extensively regulated by the state. *Davis v. Griffin-Spalding County Bd. of Educ.*, 445 F. Supp. 1048 (N.D. Ga. 1975).

**If state board acts lawfully, effect**

**on private schools not considered.** — So long as the State Board of Education is acting within the board's lawful rights, the effect of public schools on private schools cannot be considered. *Worth v. Board of Pub. Educ.*, 177 Ga. 166, 170 S.E. 77 (1933).

**If election of teacher revoked before contract executed, notice and hearing not required.** — If a petition shows only an election of a teacher by a local board of education for an additional 12-month period, which was revoked by the board before a contract was executed although the teacher alleges the teacher notified the board of the teacher's acceptance, there was never any contract by and between the parties which would require the board to give the teacher notice and a hearing under this section since the teacher was no longer a teacher upon the termination of the present contract. *Kelley v. Spence*, 223 Ga. 506, 156 S.E.2d 351 (1967) (see O.C.G.A. § 20-2-58; decided under Ga. L. 1956, p. 747 prior to revision by Ga. L. 1974, p. 1104, deleting procedures for suspension of teachers).

**Mandamus of teacher seeking only reinstatement, and not hearing, alleges no cause of action.** — When the plaintiff filed a petition for mandamus against the county school board and school superintendent to compel reinstatement in position as a teacher, although plaintiff demanded a hearing under the terms of this section and had not been given a hearing, plaintiff's writ of mandamus did not seek such a hearing, but only reinstatement; consequently, the

petition alleges no cause of action. *Westberry v. Taylor*, 215 Ga. 464, 111 S.E.2d 77 (1959) (see O.C.G.A. § 20-2-59; decided under Ga. L. 1956, p. 747 prior to revision by Ga. L. 1974, p. 1104, deleting procedures for suspension of teachers).

**Official immunity.** — In a wrongful death action by parents of a student who was murdered after leaving school early, the county superintendent and members of the board of education were entitled to official immunity based on their discretionary adoption of rules governing policies and procedures applicable to schools within the district, even though the rules did not address early dismissal of students. *Perkins v. Morgan County Sch. Dist.*, 222 Ga. App. 831, 476 S.E.2d 592 (1996).

**Preparation of school safety plan is discretionary, not ministerial, duty.** — Mandated action set forth in O.C.G.A. § 20-2-1185 with regard to every public school preparing a school safety plan is a discretionary duty rather than a ministerial duty; by so deciding, the Supreme Court of Georgia determined that the holding in *Leake v. Murphy*, 274 Ga. App. 219 (2005) was incorrect and overruled that holding. *Murphy v. Bajjani*, 282 Ga. 197, 647 S.E.2d 54 (2007).

**Cited in** *Guy v. Nelson*, 202 Ga. 728, 44 S.E.2d 775 (1947); *Mayor of Union Point v. Jones*, 88 Ga. App. 848, 78 S.E.2d 348 (1953); *Lilly v. Crisp County Sch. Sys.*, 117 Ga. App. 868, 162 S.E.2d 456 (1968); *Grimes v. Clark*, 226 Ga. 195, 173 S.E.2d 686 (1970); *Callaway v. Kirkland*, 320 F. Supp. 1135 (N.D. Ga. 1970).

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**Power to manage and control county school systems in Georgia** rests in the county board of education; the county school superintendent is obliged to comply with and carry out all rules, regulations, and instructions of the county board of education. 1974 Op. Att'y Gen. No. U74-65.

**State board cannot stop student from passing should county board feel child reading sufficiently.** — Inasmuch as this section has been judicially

endorsed numerous times, and in consideration of the fact that the State Board of Education has no express authority to preempt local boards in decisions concerning promotion of individual students, it would appear that the state board cannot directly stop an individual student from passing to the next grade level should the county board feel the child is reading sufficiently. 1975 Op. Att'y Gen. No. 75-63 (see O.C.G.A. § 20-2-59).

**State board may, as condition of**

**fiscal assistance, require implementation of state reading requirements.**

— Although the State Board of Education does not have explicit authority to directly preclude a student in a local school district from progressing from one grade level to another if the child is not capable of reading in the higher grade level, the board may, as a condition of continued state fiscal assistance, require local boards of education to implement state board established reading requirements. 1975 Op. Att'y Gen. No. 75-63.

**Rules and regulations adopted by school boards must be reasonable;** otherwise the rules and regulations cannot be enforced. 1958-59 Op. Att'y Gen. p. 136.

**County board may provide that no county bus shall transport students to unassigned areas.** — Under the general regulatory powers granted county boards of education, a county board, when the board deems it to be in the best interest and for the most efficient operation of the schools of the county, may, by regulations duly adopted, provide that no school bus under the jurisdiction of the

board shall transport pupils to any attendance area other than areas to which the school bus has been assigned by the board. 1950-51 Op. Att'y Gen. p. 272.

**Minimum age necessary for student to enroll in public schools of Georgia** is administrative question to be decided by each county or city board of education. 1954-56 Op. Att'y Gen. p. 274.

Minimum and maximum ages of children who may be taught in the public schools is a matter which addresses itself to the local boards of education. 1965-66 Op. Att'y Gen. No. 65-10.

**County board may suspend children for conducting themselves in a manner calculated to produce disorder or for committing immoral acts.** 1958-59 Op. Att'y Gen. p. 136.

**Use or possession of tobacco products.** — Local school board may promulgate a policy which prohibits the use of tobacco products by the board's employees while on school property, but may not impose a policy which prohibits the possession of tobacco products by the board's employees while on school property. 1988 Op. Att'y Gen. No. U88-9.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 78 et seq.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 196 et seq.

**ALR.** — Power of school authorities to employ physicians, nurses, oculists, and dentists, 12 ALR 922.

Power of school authorities to transfer teacher from one school or district to another, 103 ALR 1382.

Validity, construction, and application of statutes or regulations concerning rec-

reational or social activities of pupils of public schools, 134 ALR 1274.

Power of school district or school board to employ counsel, 75 ALR2d 1339.

Regulations as to fraternities and similar associations connected with educational institution, 10 ALR3d 389.

Validity, construction, and effect of municipal residency requirements for teachers, principals, and other school employees, 75 ALR4th 272.

## 20-2-60. Consolidation of county schools.

The board of education of any county shall have the right, if, in its opinion, the welfare of the schools of the county and the best interests of the pupils require, to consolidate two or more schools into one school, to be located by the county board at a place convenient to the pupils attending the consolidated school, the schoolhouse to be located as near the center of the district or districts as practicable. (Ga. L. 1919, p. 288, § 90; Code 1933, § 32-915; Ga. L. 1946, p. 206, § 3.)



## JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1910, §§ 1551(96) and 1551(97), which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Section is not unconstitutional.** *Branson v. Long*, 159 Ga. 288, 125 S.E. 500 (1924) (decided under former Code 1910, § 1551 (96)).

**Right to unite schools conferred by section.** — Right of the county board of education to unite two or more schools in the same or different districts is conferred upon the board. *Bramlett v. Callaway*, 192 Ga. 8, 14 S.E.2d 454 (1941).

**Former Code 1933, § 32-915 recognized that the high school grades were a part of the common school and not a school within themselves unless established under the provisions of former Code 1933, § 32-912.** *Irwin v. Crawford*, 210 Ga. 222, 78 S.E.2d 609 (1953).

**Only limitation placed upon the authority of the board to consolidate schools** is that the board must be of the opinion that such consolidation will promote the welfare of the schools of the county and the best interests of the pupils and that the school be located conveniently to the pupils and as near to the center of the district or districts as practicable. *Bramlett v. Callaway*, 192 Ga. 8, 14 S.E.2d 454 (1941).

**Board cannot consolidate rural and municipal schools.** — This section does not give county boards authority to consolidate rural schools with those established and maintained in municipalities; the policy of the state has been to keep independent municipal schools separate and distinct from the county schools. *Board of Educ. v. Hunt*, 159 Ga. 749, 126 S.E. 789 (1925) (decided under former Code 1910, § 1551 (96)).

**Word "consolidated" does not have to appear in name for consolidated district.** — If two or more local school districts are consolidated, it is not necessary that the word "consolidated" appear as a part of the name selected for the

consolidated district; it is proper for a proceeding to validate bonds to be conducted in the name of the district as fixed by the proper school authorities. *Hawthorne v. Turkey Creek Sch. Dist.*, 162 Ga. 462, 134 S.E. 103 (1926) (decided under former Code 1910, § 1551 (96)).

**School site chosen after hearings and approved by voters, board actions legal.** — When the site of a proposed school was chosen after several hearings by the board and was approved by the majority of the voters in the county, in view of the wide discretion given the board under this section, the actions of the board are not illegal as a matter of law nor are the actions an abuse of discretion. *Berrie v. State*, 119 Ga. App. 148, 166 S.E.2d 631 (1969) (see O.C.G.A. § 20-2-60).

**No judicial review.** — Consolidation of school districts is a part of the political power of the state which the legislature has seen fit to confer upon the county board of education, with a referendum to the voters of the consolidated districts to approve or disapprove the consolidation; and in the absence of any provision made for a review in equity of the decision of the board, the remedy by popular vote is the only one open. *Church v. Purcell*, 186 Ga. 95, 196 S.E. 806 (1938).

**Citizen, to prevent superintendent from paying over appropriated funds, must show special injury.** — In order for a private citizen to maintain an action against the State School Superintendent to prevent the superintendent from paying over funds appropriated for consolidated schools to county authorities, the citizen must show that the duty is owed to individuals and that special injury is incurred by the wrongful act. *Sanders v. Ballard*, 160 Ga. 366, 127 S.E. 851 (1925) (decided under former Code 1910, § 1551 (97)).

**Cited in** *Fitzpatrick v. Johnson*, 174 Ga. 746, 163 S.E. 908 (1932); *Keever v. Board of Educ.*, 188 Ga. 299, 3 S.E.2d 886 (1939); *Burton v. Kearse*, 204 Ga. 765, 51 S.E.2d 796 (1949); *Irwin v. Crawford*, 210 Ga. 222, 78 S.E.2d 609 (1953); *Crawford v. Irwin*, 211 Ga. 241, 85 S.E.2d 8 (1954);

Wallis v. Blue, 263 F. Supp. 965 (N.D. Ga. 1967); Davis v. Ware County Bd. of Educ., 117 Ga. App. 388, 160 S.E.2d 674 (1968); Berrie v. Baucknecht, 224 Ga. 432, 162 S.E.2d 317 (1968); Grimes v. Clark, 226 Ga. 195, 173 S.E.2d 686 (1970).

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**County board authorized to consolidate county schools.** — County board of education is vested with the authority to consolidate county schools when, in the opinion of the board, the consolidation is in the best interests of the schools and the pupils of the county; this is a duty and responsibility which is vested in the county school board rather than the State Board of Education. 1948-49 Op. Att’y Gen. p. 502.

RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 78, 95.  
**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 138 et seq., 514 et seq., 521, 522, 557, 558.  
**ALR.** — Zoning regulations as applied to public elementary and high schools, 74 ALR3d 136.

20-2-61. Fundamental roles of local boards of education and local school superintendents.

(a) The fundamental role of a local board of education shall be to establish policy for the local school system with the focus on student achievement. The fundamental role of a local school superintendent shall be to implement the policy established by the local board. It shall not be the role of the local board of education or individual members of such board to micromanage the superintendent in executing his or her duties, but it shall be the duty of the local board to hold the local school superintendent accountable in the performance of his or her duties. Local board of education members should work together with the entire local board of education and shall not have authority as independent elected officials but shall only be authorized to take official action as members of the board as a whole. Nothing in this subsection shall be construed to alter, limit, expand, or enlarge any powers, duties, or responsibilities of local boards of education, local board members, or local school superintendents.

(b) Except as may be allowed by law, no local board of education shall delegate or attempt to delegate its policy-making functions. (Code 1981, § 20-2-61, enacted by Ga. L. 2010, p. 452, § 6/SB 84.)

**Effective date.** — This Code section became effective July 1, 2010.  
**Editor’s notes.** — This Code section formerly pertained to reorganizing schools and fixing the number of grades at each. The former Code section was based on Ga. L. 1953, Nov.-Dec. Sess., p. 282, § 1 and was repealed by Ga. L. 1985, p. 1657, § 2, effective July 1, 1986.

## 20-2-62. Employment of county agents and home demonstration agents to carry on extension work.

Power is conferred upon the county tax levying authorities of the several counties, as well as the county boards of education, to carry on educational work for the promotion of the extension work in agriculture and home economics under the Act of Congress approved May 8, 1914 (7 U.S.C.A., Sections 341 to 348), and resolution of the General Assembly, under the date of August 14, 1914 (Ga. L. 1914, p. 1243), giving assent of the state to such Act of Congress, by employing county agricultural agents and home demonstration agents and supervising their work and paying therefor. The boards of education of the several counties may employ and pay county agents and home demonstration agents to carry on such extension work. (Ga. L. 1922, p. 82, § 2; Ga. L. 1923, p. 88, § 1; Code 1933, § 32-944.)

**Cross references.** — Cooperative Extension Service of University of Georgia, § 2-6-4 et seq. Authority of board of regents with regard to federal grants for

agricultural extension work, § 20-3-38. Collection of county taxes for payment of county agricultural and home demonstration agents, § 48-5-220(10).

## JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1551(116), which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Counties having schools supported by taxation may employ county agents.** — County board of education in counties having a system of public schools supported by local taxation are authorized to employ, and pay from the school funds of the counties, county demonstration agents, vocational agricultural teachers, and home demonstration agents. Board of Educ. v. Butler, 154 Ga. 569, 115 S.E. 10 (1922) (decided under former Code 1910, § 1551 (116)).

**County board may supplement salaries of county agents.** — Board of regents, through the college of agriculture, controls the general scope of the agricultural extension work and is empowered to employ and discharge county agents, while the counties may, if the

counties choose to levy the tax therefor, supplement the salaries of the county agents. Royal Indem. Co. v. Humphries, 90 Ga. App. 567, 83 S.E.2d 565 (1954).

**County board cannot employ agricultural teacher in independent school system.** — Board of education of a county, in which a system of public schools is supported by local taxation, is without authority to employ one to teach agriculture in the high school of a city maintaining an independent public school system and to pay the teacher with the funds belonging to the former system, although students from the county districts, as well as those from the city, are taught by the teacher, and although the city furnishes the classroom and laboratory for conducting the teaching, especially if it is not shown that the value of the use of the classroom and laboratory is equal to the funds of the county school system applied to the payment of the teacher. Board of Educ. v. Butler, 154 Ga. 569, 115 S.E. 10 (1922) (decided under former Code 1910, § 1551 (116)).



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**Section is permissive, not mandatory,** i.e., the county boards of education “may” not “must” employ county agents and home demonstration agents; since the board can employ and pay agents, the board can employ and pay part or all of the salaries of employees of the agent. 1958-59 Op. Att’y Gen. p. 127.

**When taxes levied, salaries paid by**

**general governing body.** — If county taxes are levied under Ga. Const. 1945, Art. VII, Sec. IV, Para. II (see now Ga. Const. 1983, Art. IX, Sec. IV, Para. I) the expenses and salaries of the county and home demonstration agent would be paid by the general governing body of the county. 1958-59 Op. Att’y Gen. p. 127.

RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 349 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 1074 et seq.

**20-2-63. Prohibit certain conflicts of interest of board members.**

(a)(1) No local board of education member shall use or attempt to use his or her official position to secure unwarranted privileges, advantages, or employment for himself or herself, his or her immediate family member, or others.

(2) No local board of education member shall act in his or her official capacity in any matter where he or she, his or her immediate family member, or a business organization in which he or she has an interest has a material financial interest that would reasonably be expected to impair his or her objectivity or independence of judgment. Compliance with Code Section 20-2-505 shall not constitute a violation of this paragraph.

(3) No local board of education member shall solicit or accept or knowingly allow his or her immediate family member or a business organization in which he or she has an interest to solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing that board member in the discharge of his or her official duties. This paragraph shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office if the local board of education member has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the local board of education member in the discharge of his or her official duties. For purposes of this paragraph, a gift, favor, loan, contribution, service, promise, or other thing of value shall not include the items contained in subparagraphs (a)(2)(A) through (a)(2)(J) of Code Section 16-10-2.

(4) No local board of education member shall use, or knowingly allow to be used, his or her official position or any information not generally available to the members of the public which he or she receives or acquires in the course of and by reason of his or her official position for the purpose of securing financial gain for himself or herself, his or her immediate family member, or any business organization with which he or she is associated.

(5) No local board of education member or business organization in which he or she has an interest shall represent any person or party other than the local board of education or local school system in connection with any cause, proceeding, application, or other matter pending before the local school system in which he or she serves or in any proceeding involving the local school system in which he or she serves.

(6) No local board of education member shall be prohibited from making an inquiry for information on behalf of a constituent if no fee, reward, or other thing of value is promised to, given to, or accepted by the local board of education member or his or her immediate family member in return therefor.

(7) No local board of education member shall disclose or discuss any information which is subject to attorney-client privilege belonging to the local board of education to any person other than other board members, the board attorney, the local school superintendent, or persons designated by the local school superintendent for such purposes unless such privilege has been waived by a majority vote of the whole board.

(8) No member of a local board of education may also be an officer of any organization that sells goods or services to that local school system, except as provided in Code Section 20-2-505 and excluding nonprofit membership organizations.

(9) No local board of education member shall be deemed in conflict with this subsection if, by reason of his or her participation in any matter required to be voted upon, no material or monetary gain accrues to him or her as a member of any profession, occupation, or group to any greater extent than any gain could reasonably be expected to accrue to any other member of that profession, occupation, or group.

(b) Upon a motion supported by a two-thirds' vote, a local board of education may choose to conduct a hearing concerning the violation by a local board of education member of any conflict of interest provision in subsection (a) of this Code section. The local board of education member accused of violating said provision shall have 30 days' notice prior to a hearing on the matter. Said accused member may bring witnesses on

his or her behalf, and the local board of education may call witnesses to inquire into the matter. If it is found by a vote of two-thirds of all the members of the board that the accused member has violated a conflict of interest provision contained in subsection (a) of this Code section, the local board shall determine an appropriate sanction. A board member subject to sanction pursuant to this Code section may, within 30 days of such sanction vote, appeal such decision to the State Board of Education, which shall be empowered to affirm or reverse the decision to sanction such board member. The State Board of Education shall promulgate rules governing such appeal process. This subsection shall apply only to local board of education members elected or appointed on or after July 1, 2010.

(c) As used in this Code section, the term “immediate family member” means a spouse, child, sibling, or parent or the spouse of a child, sibling, or parent. (Code 1981, § 20-2-63, enacted by Ga. L. 2010, p. 452, § 7/SB 84.)

**Effective date.** — This Code section became effective July 1, 2010.  
**Editor’s notes.** — This Code section formerly pertained to the failure to arrange for operation of schools. The former

Code section was based on Ga. L. 1919, p. 288, § 113 and Code 1933, § 32-940 and was repealed by Ga. L. 1990, p. 1343, § 1, effective July 1, 1990.

**20-2-64. Establishment and maintenance of trusts or funds.**

(a) Each local board of education is authorized to establish and maintain one or more funds or trusts for the purposes specified in this Code section and to designate one or more fund managers or trustees thereof. Each local board of education shall be deemed to be a person for the purposes of Chapter 12 of Title 53, known as “The Revised Georgia Trust Code of 2010,” and may take any action which a natural person would be authorized to take and shall be subject to any duty imposed upon a natural person by the provisions of such chapter, except as provided in this Code section.

(b) A local board of education shall appoint one or more managers or trustees for any separate fund or trust, respectively, created pursuant to the authority of this Code section and shall not act as trustee or manager of such a trust or fund.

(c) A local board of education is authorized to accept and pay over to or place in such trust or fund any gifts, grants, bequests, and transfers of real or personal property and money made for the furtherance of such trust’s or fund’s purposes, as set forth in subsection (d) of this Code section. No funds or property of the local board of education derived from tax revenues or state grants or appropriations shall be placed in any such trust or fund or expended for the administration of such trust or fund.



(d) Trust or fund property and the income therefrom may be expended, unless otherwise restricted by the donor thereof, for:

(1) Scholarships, grants, loans, and other educational assistance programs for students or graduates, or both, of the school system;

(2) Matching any matching grant given to such trust or fund or to the local board of education;

(3) Any purpose specified by the donor of such trust property, unless limited by subsection (e) of this Code section;

(4) Any other educational purpose; or

(5) The cost of administering the trust.

(e) Any such trust or fund shall be established under such further terms and conditions as may be deemed appropriate by the local board of education from time to time to the extent consistent with the uses of funds and purposes described in subsection (d) of this Code section. The local board of education, manager, or trustee may refuse to accept any gift, grant, bequest, or transfer which:

(1) Contains any condition, restriction, or limitation that may jeopardize the tax exempt status of such trust or fund for federal or state income tax purposes;

(2) Would cause the trust or fund to be treated as a private foundation under Section 509 or any corresponding provision of the Internal Revenue Code, as amended; or

(3) Contains any condition, restriction, or limitation deemed by the local board of education, fund manager, or trustee to be inconsistent with the purposes, terms, or conditions of such fund or trust. (Code 1981, § 20-2-64, enacted by Ga. L. 1992, p. 1010, § 3; Ga. L. 2010, p. 579, § 13/SB 131.)

**The 2010 amendment**, effective July 1, 2010, substituted “The Revised Georgia Trust Code of 2010,” for “the ‘Georgia Trust Act,’” in the middle of the second sentence of subsection (a).

**Code Commission notes.** — Ga. L.

1992, p. 1010, § 3, and Ga. L. 1992, p. 1831, § 1, both enacted a Code Section 20-2-64. Pursuant to Code Section 28-9-5, in 1992, the section enacted by Ga. L. 1992, p. 1831, § 1, was renumbered as Code Section 20-2-65.

## **20-2-65. Programs for care and supervision of students before school, after school, or during vacation periods.**

(a) The General Assembly of Georgia, recognizing the need for providing school age children with programs outside the normal school curriculum that enable them to reach their full potential as students within that curriculum, hereby declares that programs which provide for the care and supervision of such students outside of normal school

hours and during vacation periods serve an educational purpose, in that they are necessary or incidental to public education and can be an integral part of the total school program offered by public schools in this state.

(b) The board of education of any county, area, or independent school system is authorized to establish and operate, contract for, or otherwise make provisions for programs that provide care and supervision before school, after school, or during vacation periods, or during any combination of these time periods, for school age children who are temporary or permanent residents of the geographical area served by such system.

(c) Consistent with existing local rules, regulations, policies, or procedures, a local board of education shall conduct a needs assessment, the scope and methodology of which shall be determined solely by the board, before establishing, operating, contracting for, or otherwise making provisions for programs defined in subsection (b) of this Code section.

(d) In accordance with the requirements of Code Section 50-14-1, the local board of education shall notify the public of the board's intention to vote whether to provide programs as defined in subsection (b) of this Code section. A local board of education shall provide such additional notice or proceedings as deemed appropriate to solicit public comment and review of the board's actions regarding any programs defined in subsection (b) of this Code section. (Code 1981, § 20-2-65, enacted by Ga. L. 1992, p. 1831, § 1.)

**Code Commission notes.** — Ga. L. 1992, p. 1010, § 3, and Ga. L. 1992, p. 1831, § 1, both enacted a Code Section 20-2-64. Pursuant to Code Section 28-9-5,

in 1992, the section enacted by Ga. L. 1992, p. 1831, § 1, was renumbered as Code Section 20-2-65.

## JUDICIAL DECISIONS

**Program as governmental function.** — An after-school program operated by a school district in accordance with O.C.G.A. § 20-2-65 is a governmental activity serving an educational purpose;

therefore, the school district was entitled to sovereign immunity even though a fee was paid. *Dollar v. Dalton Pub. Schs.*, 233 Ga. App. 827, 505 S.E.2d 789 (1998).

## 20-2-66. School breakfast programs.

(a) Each local school system in this state is encouraged to establish and support a school breakfast program to make breakfast available to all students in kindergarten through grade eight. All school systems are required to establish and support a school breakfast program in all schools with kindergarten through grade eight if at least 25 percent of the student population is eligible for free or reduced price lunch under federal guidelines and in all schools not containing kindergarten

through grade eight if at least 40 percent of the student population is eligible for free or reduced price lunch under federal guidelines. School breakfast programs shall be phased in over a period beginning September 1, 1994, and ending June 15, 1996, in all such schools. Each local school system operating a school breakfast program pursuant to this Code section shall be reimbursed by the state at the federal reimbursement rate per meal prepared and served. The school breakfast program reimbursement by the state shall be automatically terminated if federal funding for this program ceases.

(b) The State Board of Education shall promulgate rules and regulations which:

(1) Establish minimum nutritional requirements for school breakfast programs which meet or exceed the minimum federal regulations;

(2) Utilize federal standards of income eligibility for free or reduced price meals for lower income students;

(3) Prescribe uniform methods of determining eligibility for free or reduced price meals that are discreet and accessible. Each participating school system shall establish a method to regularly notify parents of the availability of the program;

(4) Provide that each participating local board of education submit a plan of compliance;

(5) Provide that compliance with the standards and regulations of the National School Lunch Act and Child Nutrition Act of 1966, as amended, shall be deemed compliance with the requirements promulgated by the board;

(6) Assist the local school board in applying for and obtaining start-up grant money for such programs. (Code 1981, § 20-2-66, enacted by Ga. L. 1994, p. 295, § 1.)

**Administrative rules and regulations.** — School nutrition program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Chapter 160-5-6.

**20-2-67. Local school system or school subject to corrective action plan for budget deficit; financial operations form; publication; mailing to Department of Education and local governing body.**

(a) When an audit by the Department of Audits and Accounts finds and reports irregularities or budget deficits in the fund accounting information regarding a local school system or a school within the local school system, the Department of Audits and Accounts shall report the



findings of irregularities or budget deficits to the State Board of Education and the local board of education.

(b) The State Board of Education shall inform the superintendent of the local school system of the irregularities or budget deficits regarding a local school system's or a school's fund accounting information. The superintendent shall submit to the Department of Education a response to the findings and a corrective action plan as defined by rules and regulations adopted by the State Board of Education designed to correct the financial irregularities or budget deficits for the school or school system. From the time such irregularity or budget deficit is discovered until the time it is eliminated, the local school superintendent shall present to each member of the local board of education for his or her review and written acknowledgment a monthly report containing all anticipated expenditures by budget function for such school or school system during the current month. The report shall be presented to local board members on or before the tenth business day of each month. Each monthly report shall be signed by each member of that local board and recorded and retained in the minutes of the meeting of the local board of education.

(c) Not later than September 30 of the year, each local board of education shall cause to be published in the official county organ wherein the local school system is located once a week for two weeks a statement of actual financial operations for such schools or school system identified by the Department of Audits and Accounts as having financial irregularities. Such statement of actual financial operations shall be in a form to be specified and prescribed by the state auditor for the purpose of indicating the current financial status of the schools or school system. Prior to publication, such form shall be executed by the local board of education and signed by each member of said board and the local school superintendent.

(d) A copy of the actual financial operations form required to be published by subsection (c) of this Code section shall be mailed by each local board of education to the Department of Education and the local county board of commissioners or local municipal governing authority. A current copy of said form shall be maintained on file in the central administrative office of the local school system for public inspection for a period of at least two years from the date of its publication. Copies of the statement shall be made available on request. (Code 1981, § 20-2-67, enacted by Ga. L. 1996, p. 821, § 1; Ga. L. 2000, p. 618, § 7.)

**Editor's notes.** — Ga. L. 2000, p. 618, may be cited as the 'A Plus Education § 1, not codified by the General Assembly, Reform Act of 2000.'" provides: "This Act shall be known and

**20-2-68. Information for verification of fund expenditure.**

The Office of Planning and Budget shall collect from local school systems and local school systems shall supply information sufficient for the Office of Planning and Budget to verify the proper expenditure of funds and employment of positions funded in the Quality Basic Education formula and categorical grants. (Code 1981, § 20-2-68, enacted by Ga. L. 2000, p. 618, § 8.)

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, may be cited as the 'A Plus Education Reform Act of 2000.' provides: "This Act shall be known and

**20-2-69. Requirements and procedures for issuing and awarding high school diplomas to honorably discharged World War II Veterans.**

Each local board of education shall issue high school diplomas to veterans who failed to receive diplomas due to an interruption of their education by service in World War II. The local board of education of the school district where the veteran attended high school shall award the high school diploma to such veteran. A veteran shall make application for a diploma to the appropriate local board of education and furnish proof that such person is a World War II veteran who had his or her education interrupted as a result of service in World War II. Honorably discharged veterans who served in World War II between September 16, 1940, and December 31, 1946, and who did not graduate from high school are eligible for a diploma; provided, however, that attendance in high school ranging from 1937-1946 with graduation class years ranging from 1941-1950 is required. Veterans who qualify under this Code section and who have earned a general educational development (GED) diploma are also eligible for a high school diploma. Diplomas may be awarded posthumously. The local board of education is encouraged to present such diplomas to World War II veterans on or near Veterans Day to bring to the attention of students the importance of such day and the great sacrifices made by World War II veterans. (Code 1981, § 20-2-69, enacted by Ga. L. 2001, p. 478, § 1.)

**Cross references.** — Instructional activities focusing on veterans and the armed forces, § 20-2-147.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2005, "Veterans

Day" was substituted for "Veterans' Day" in the last sentence.

**Law reviews.** — For article, "Education Law," see 53 Mercer L. Rev. 281 (2001).

**20-2-70. Requirements and procedures for issuing and awarding high school diplomas to honorably discharged Korean Conflict and Vietnam Conflict veterans.**

Each local board of education shall issue high school diplomas to veterans who failed to receive diplomas due to an interruption of their education by service in the Korean Conflict or service in the Vietnam Conflict. The local board of education of the school district where the veteran attended high school shall award the high school diploma to such veteran. A veteran shall make application for a diploma to the appropriate local board of education and furnish proof that such person is a veteran of the Korean Conflict or the Vietnam Conflict who had his or her education interrupted as a result of service in the Korean Conflict or the Vietnam Conflict. Honorably discharged veterans who served in the Korean Conflict between June 25, 1950, and January 31, 1955, and honorably discharged veterans who served in the Vietnam Conflict between August 5, 1964, and May 7, 1975, and who did not graduate from high school are eligible for a diploma pursuant to this Code section; provided, however, that attendance in high school ranging from 1946 through 1955 with graduation class years ranging from 1951 through 1955 is required for veterans of the Korean Conflict and attendance in high school ranging from 1960 through 1975 with graduation class years ranging from 1964 through 1975 is required for veterans of the Vietnam Conflict. Veterans who qualify under this Code section and who have earned a general educational development (GED) diploma are also eligible for a high school diploma. Diplomas may be awarded posthumously. The local board of education is encouraged to present such diplomas to such veterans on or near Veterans Day to bring to the attention of students the importance of such day and the great sacrifices made by such veterans. (Code 1981, § 20-2-70, enacted by Ga. L. 2002, p. 812, § 1.)

**Cross references.** — The Veterans Education Reorganization Act of 1949, § 38-4-30 et seq.

**20-2-71. Placement of twins or higher order multiples in the same classroom.**

(a) For purposes of this Code section, the term “higher order multiples” means triplets, quadruplets, quintuplets, or more.

(b) A school must place twins or higher order multiples from the same family together in the same classroom if the children are in the same grade level at the same school and meet the eligibility requirements of the class, and the children’s parent or legal guardian requests the placement, unless factual performance evidence shows proof that these specific students should be separated. The parent or guardian



must request the classroom placement no later than five days before the first day of each school year or five days after the first day of attendance of the children during a school year if the children are enrolled in the school after the school year commences. (Code 1981, § 20-2-71, enacted by Ga. L. 2007, p. 674, § 1/SB 123; Ga. L. 2009, p. 8, § 20/SB 46.)

### **20-2-72. Code of ethics for local board of education members.**

(a) The State Board of Education shall adopt a model code of ethics for members of local boards of education by October 1, 2010. Such model code of ethics shall also include appropriate consequences for violation of a provision or provisions of such code. The State Board of Education may periodically adopt revisions to such model code as it deems necessary.

(b) Within three months of adoption by the State Board of Education of a model code of ethics pursuant to subsection (a) of this Code section, each local board of education shall adopt a code of ethics that includes, at a minimum, such model code of ethics. Each local board of education shall incorporate into its code of ethics any revisions adopted by the State Board of Education to the model code of ethics pursuant to subsection (a) of this Code section within three months of adoption of such revisions. (Code 1981, § 20-2-72, enacted by Ga. L. 2010, p. 452, § 8/SB 84.)

**Effective date.** — This Code section became effective July 1, 2010.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2010, Code

Section 20-2-72, as enacted by Ga. L. 2010, p. 894, § 1, was redesignated as Code Section 20-2-74.

### **20-2-73. Suspension and removal of local school board members under certain circumstances.**

(a)(1) Notwithstanding Code Section 20-2-54.1 or any other provisions of law to the contrary, if a local school system or school is placed on the level of accreditation immediately preceding loss of accreditation for school board governance related reasons by one or more accrediting agencies included in subparagraph (A) of paragraph (6) of Code Section 20-3-519, the State Board of Education shall conduct a hearing in not less than ten days nor more than 30 days and recommend to the Governor whether to suspend all eligible members of the local board of education with pay. If the State Board of Education makes such recommendation, the Governor may, in his or her discretion, suspend all eligible members of the local board of education with pay and, in consultation with the State Board of Education, appoint temporary replacement members who shall be otherwise qualified to serve as members of such board.

(2) Notwithstanding Code Section 20-2-54.1 or any other provisions of law to the contrary, if a local school system or school has been placed on, as of April 20, 2011, the level of accreditation immediately preceding loss of accreditation for school board governance related reasons by one or more accrediting agencies included in subparagraph (A) of paragraph (6) of Code Section 20-3-519 and does not reattain full accreditation status by July 1, 2011, the State Board of Education shall conduct a hearing in not less than ten days nor more than 30 days and recommend to the Governor whether to suspend all members of the local board of education with pay. If the State Board of Education makes such recommendation, the Governor may, in his or her discretion, suspend all members of the local board of education with pay and, in consultation with the State Board of Education, appoint temporary replacement members who shall be otherwise qualified to serve as members of such board.

(b) Any local board of education member suspended under this Code section may petition the Governor for reinstatement no earlier than 30 days following suspension and no later than 60 days following suspension. In the event that a suspended member does not petition for reinstatement within the allotted time period, his or her suspension shall be converted into permanent removal, and the temporary replacement member shall become a permanent member and serve out the remainder of the term of the removed member.

(c) Upon petition for reinstatement by a suspended local board of education member, the Governor or his or her designated agent shall conduct a hearing for the purpose of receiving evidence relative to whether the local board of education member's continued service on the local board of education is more likely than not to improve the ability of the local school system or school to retain or reattain its accreditation. The appealing member shall be given at least 30 days' notice prior to such hearing. Such hearing shall be held not later than 90 days after the petition is filed and in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except that the individual conducting the hearing shall have the power to call witnesses and request documents on his or her own initiative. For purposes of said chapter and any hearing conducted pursuant to this Code section, the Governor shall be considered the agency, and the Attorney General or his or her designee shall represent the interests of the Governor in the hearing. If it is determined that it is more likely than not that the local board of education member's continued service on the local board of education improves the ability of the local school system or school to retain or reattain its accreditation, the member shall be immediately reinstated; otherwise, the member shall be permanently removed, and the temporary replacement member shall become a permanent member and serve out the remainder of the term of the removed member or until

the next general election which is at least six months after the member was permanently removed, whichever is sooner. Judicial review of any such decision shall be in accordance with Chapter 13 of Title 50.

(d) Paragraph (1) of subsection (a) of this Code section shall apply to a local school system or school which is placed on the level of accreditation immediately preceding loss of accreditation on or after April 20, 2011.

(e) This Code section shall apply to all local board of education members, regardless of when they were elected or appointed. (Code 1981, § 20-2-73, enacted by Ga. L. 2010, p. 452, § 8/SB 84; Ga. L. 2011, p. 1, § 12/HB 326; Ga. L. 2011, p. 26, § 3/SB 79; Ga. L. 2011, p. 752, § 20/HB 142.)

**Effective date.** — This Code section became effective July 1, 2010.

**The 2011 amendments.** — The first 2011 amendment, effective March 15, 2011, substituted “subparagraph (6)(A)” for “subparagraph (6.1)(A)” in the first sentence of subsection (a). The second 2011 amendment, effective April 20, 2011, redesignated former subsection (a) as present paragraph (a)(1), and, in paragraph (a)(1), substituted “subparagraph (A) of paragraph (6.1)” for “subparagraph (6.1)(A)” and added paragraph (a)(2); in subsection (c), in the first and fifth sentences, inserted “or reattain”, and substituted “agency,” for “agency” in the fourth sentence; in subsection (d), substituted “Paragraph (1) of subsection (a) of this” for “This” at the beginning, substituted “the effective date of this subsection” for “July 1, 2010”; and substituted the present provisions of subsection (e) for the former provisions, which read: “This Code section shall apply only to local board of education members elected or appointed on or after July 1, 2010.” The third 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted “subparagraph (A) of paragraph (6.1)” for “subparagraph (6.1)(A)” in the first sentence of subsection (a). See editor’s note for applicability. See the Code Commission note and editor’s note regarding the effect of these amendments.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2011, “subparagraph (A) of paragraph (6) of Code Section 20-3-519” was substituted for “subpara-

graph (6.1)(A) of Code Section 20-3-519” in paragraph (a)(1); in paragraph (a)(2), “as of April 20, 2011” was substituted for “as of the effective date of this paragraph” and “paragraph (6)” was substituted for “paragraph (6.1)” in the first sentence; and “April 20, 2011” was substituted for “the effective date of this subsection” in subsection (d).

Pursuant to Code Section 28-9-3, in 2011, the amendment of paragraph (a)(1) of this Code section by Ga. L. 2011, p. 1, § 12, was treated as impliedly repealed and superseded by Ga. L. 2011, p. 26, § 3, due to irreconcilable conflict. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

**Editor’s notes.** — Ga. L. 2011, p. 1, § 17/HB 326, not codified by the General Assembly, provides, in part, that the 2011 amendment shall be applicable to postsecondary students beginning in the fall of 2011.

Ga. L. 2011, p. 26, § 4/SB 79, not codified by the General Assembly, provides: “If a local school system or school is placed on the level of accreditation immediately preceding loss of accreditation on or after July 1, 2010, but prior to the effective date of this Act, local board of education members elected or appointed on or after July 1, 2010, but prior to the effective date of this Act shall be subject to the provisions of Code Section 20-2-73 as they existed on the day prior to the effective date of this Act.” The Act became effective April 20, 2011.

Ga. L. 2011, p. 752, § 54(e)/HB 142, not



codified by the General Assembly, provides: “In the event of an irreconcilable conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2011 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1

through 53 of this Act to the extent of the conflict.” Accordingly, the amendment to paragraph (a)(1) of this Code section by Ga. L. 2011, p. 752, § 20/HB 142, was not given effect.

**Law reviews.** — For article, “Education: Postsecondary Education,” see 28 Ga. St. U. L. Rev. 193 (2011).

**20-2-74. Solicit and accept donations for educational purposes.**

Local boards of education shall be authorized to solicit and accept donations, contributions, and gifts of money from any source for the purposes of field trips for their students and for any other educational purposes. (Code 1981, § 20-2-74, enacted by Ga. L. 2010, p. 894, § 1/HB 1200.)

**Effective date.** — This Code section became effective July 1, 2010.

Section 20-2-72, as enacted by Ga. L. 2010, p. 894, § 1, was redesignated as Code Section 20-2-74.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2010, Code

ARTICLE 4

INCREASED FLEXIBILITY FOR LOCAL SCHOOL SYSTEMS

**Editor’s notes.** — Ga. L. 2000, p. 618, § 9, effective July 1, 2000, repealed the Code sections formerly codified at this article. The former article consisted of Code Sections 20-2-80 and 20-2-81, relating to local school trustees, and was based

on Ga. L. 1919, p. 288, §§ 120, 121; Code 1933, §§ 32-1104, 32-1105; Ga. L. 1946, p. 206, §§ 10, 11; Ga. L. 1983, p. 3, §§ 16, 53; Ga. L. 1992, p. 6, § 20. For present comparable provisions, see O.C.G.A. § 20-2-85 et seq.

**20-2-80. Requests for increased flexibility; requirements.**

(a) A local school system may request increased flexibility from certain state laws, rules, and regulations in exchange for increased accountability and defined consequences through a contract with the State Board of Education. Such contract shall establish a framework of accountability, flexibility, and consequences in accordance with this article.

(b) A local school system may elect not to request increased flexibility in exchange for increased accountability and defined consequences and opt to remain under all current laws, rules, regulations, policies, and procedures, and such local school system shall:

- (1) Conduct a public hearing for the purpose of providing public notice that such local school system is opting for the status quo. The public hearing shall be advertised in a local newspaper of general circulation which shall be the same newspaper in which other legal announcements of the local board of education are advertised; and

(2) Sign a statement on a form provided by the state board that such local school system is opting for the status quo. (Code 1981, § 20-2-80, enacted by Ga. L. 2008, p. 82, § 1/HB 1209.)

**20-2-81. Strategic plan and proposed contract for local school systems requesting flexibility.**

(a) Each local school system which elects to request increased flexibility pursuant to this article shall develop a five-year strategic plan which sets out the school system's vision and mission for improving the performance of its schools and shall clearly delineate in a proposed contract the following for measuring the improvement and performance of its schools:

(1) Current performance data, grade levels, and demographic data for each school within the school system;

(2) Performance goals for each school, including both improvement and achievement; and

(3) Performance measures and benchmarks for each school for evaluating improvement and achievement and monitoring progress toward yearly performance goals.

(b) The proposed strategic plan shall incorporate, to the extent practicable, school improvement plans in effect for schools in the local school system.

(c) The department shall provide an electronic template accessible through the Internet for local school systems to input their proposed contracts. The template shall be designed to include the information contained in subsection (a) of this Code section.

(d) Prior to the submission of a proposed contract to the department, a local board of education shall schedule and hold a public hearing for the purpose of providing an opportunity for full discussion and public input on the strategic plan and proposed contract, including formal, written comments or suggestions regarding the local school system's flexibility requests and performance goals and their impact on each school. The public hearing shall be advertised in a local newspaper of general circulation which shall be the same newspaper in which other legal announcements of the local board of education are advertised.

(e) The local school system shall submit the proposed contract to the department in accordance with time frames established by the department. (Code 1981, § 20-2-81, enacted by Ga. L. 2008, p. 82, § 1/HB 1209.)

**20-2-82. Contract terms for local school systems requesting flexibility.**

(a) The local board of education and the department shall enter into negotiations on the appropriate terms of the contract, including the accountability, flexibility, and consequences components of the contract in accordance with Code Section 20-2-84, in consultation with the Office of Student Achievement. The accountability, flexibility, and consequences components may vary between schools and clusters.

(b) The flexibility requested by a local school system pursuant to subsection (b) of Code Section 20-2-84 shall result in consequences in accordance with subsection (c) of Code Section 20-2-84 and Code Section 20-2-84.1 for noncompliance with the accountability requirements established pursuant to subsection (a) of Code Section 20-2-84.

(c) The department, in consultation with the Office of Student Achievement, shall make a recommendation to the state board on whether the proposed terms of the contract should be approved by the state board.

(d)(1) The state board shall have the authority to approve or deny approval of the proposed terms of the contract but shall give all due consideration to the recommendation and input from the Office of Student Achievement.

(2) In the event that the state board denies approval of the proposed terms of the contract, the local board of education shall work with the department, in consultation with the Office of Student Achievement, for further revisions and resubmission to the state board.

(e) The state board shall be authorized to approve a waiver or variance request of specifically identified state rules, regulations, policies, and procedures or provisions of this chapter upon the inclusion of such request in the local school system's proposed contract and in accordance with subsection (b) of Code Section 20-2-84. The goal for each waiver and variance shall be improvement of student performance. The state board shall not be authorized to waive or approve variances on any federal, state, and local rules, regulations, court orders, and statutes relating to civil rights; insurance; the protection of the physical health and safety of school students, employees, and visitors; conflicting interest transactions; the prevention of unlawful conduct; any laws relating to unlawful conduct in or near a public school; any reporting requirements pursuant to Code Section 20-2-320 or Chapter 14 of this title; the requirements of Code Section 20-2-211.1; or the requirements in subsection (c) of Code Section 20-2-327. A local school system that has received a waiver or variance shall remain



subject to the provisions of Part 3 of Article 2 of Chapter 14 of this title, the requirement that it shall not charge tuition or fees to its students except as may be authorized for local boards by Code Section 20-2-133, and shall remain open to enrollment in the same manner as before the waiver request. (Code 1981, § 20-2-82, enacted by Ga. L. 2008, p. 82, § 1/HB 1209; Ga. L. 2010, p. 237, § 1C/HB 1079; Ga. L. 2011, p. 635, § 2/HB 186.)

**The 2010 amendment**, effective July 1, 2010, in subsection (e), in the third sentence, deleted “or” following “public school,” near the end and added “; or the requirements of Code Section 20-2-211.1” at the end.

**The 2011 amendment**, effective May 13, 2011, in subsection (e), in the third sentence, deleted “or” following “Chapter 14 of this title,” near the end, and added “; or the requirements in subsection (c) of Code Section 20-2-327” at the end.

**Editor’s notes.** — Ga. L. 2011, p. 635, § 1/HB 186, not codified by the General Assembly, provides: “The General Assembly finds that:

“(1) Our state’s long-term prosperity depends on supporting an education system that is designed to prepare our students for a global economy;

“(2) High school students and parents must understand that they have options for career pathway programs of study that join a college-ready academic core with quality career, technical, and agricultural education studies that result in a high school diploma and preparation for success in advanced training, an associate’s degree, a baccalaureate degree, and a career;

“(3) Local school systems must provide every student with choices that are academically rigorous and aligned to opportunities in high-demand, high-skill, high-wage career fields and to postsecondary career and technical pathways leading to advanced credentials or degrees;

“(4) The State Board of Education, the Board of Regents of the University System of Georgia, and the Board of Technical and Adult Education must work together so that academic courses that are embedded within career, technical, and agricultural education courses (CTAE) are given appropriate academic credit at the high

school level and recognized at the postsecondary level;

“(5) Teachers should be provided with professional development opportunities that enforce the academically rigorous standards in relevant, project based coursework;

“(6) High school students should clearly understand the options for dual high school and postsecondary credit, and the state should properly fund these options;

“(7) Every state education agency, postsecondary institution, and local school system should provide all high school students with opportunities for accelerated learning through dual credit coursework leading to at least six postsecondary credits and have as a collective goal to graduate every student with postsecondary credit;

“(8) Georgia’s strategic industries must be partners in our public education system (secondary and postsecondary) so that they are assured that our high school graduates are prepared for success in the workforce;

“(9) Georgia’s public education system must incorporate many different types of assessments and certificates into their programs so that a student’s skill level is assessed and that it also has meaning to them for postsecondary and career success; and

“(10) Georgia’s students must understand that a high school diploma and some form of postsecondary credential are key to success in the workforce and earning a family living wage.”

**Law reviews.** — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 115 (2011). For article, “Education: Elementary and Secondary Education,” see 28 Ga. St. U. L. Rev. 115 (2011).

**20-2-83. State board approval of local school board flexibility contract.**

(a) Upon approval of a proposed contract of a local school system which has requested flexibility, the state board shall enter into such contract with the local board of education.

(b) The terms of the contract shall include, but not be limited to, accountability, flexibility, and consequences components as negotiated pursuant to subsection (a) of Code Section 20-2-82 and in accordance with Code Section 20-2-84.

(c) Each contract shall be for a term of five years. The terms of the contract may provide for automatic extension of such contract if a local school system has met its accountability requirements.

(d) The terms of a contract may be amended during the term of the contract only if warranted due to unforeseen circumstances and upon approval of the state board and the local board of education. (Code 1981, § 20-2-83, enacted by Ga. L. 2008, p. 82, § 1/HB 1209.)

**20-2-84. Accountability, flexibility, and consequences components of contract.**

(a) The accountability component of the contract provided in Code Section 20-2-83 shall include at least one of the student achievement measures in paragraphs (1) through (4) of this subsection, including both total scores and any needed targeted subgroups:

(1) High school graduation rates;

(2) SAT or ACT performance;

(3) State standardized test data, which may include criterion-referenced competency tests, the Georgia High School Graduation Test, end-of-course assessments, or a combination thereof;

(4) Advanced placement or international baccalaureate participation and performance; and

(5) Any other accountability measures included pursuant to Part 3 of Article 2 of Chapter 14 of this title.

(b) The flexibility component of the contract provided in Code Section 20-2-83 shall include the waiver or variance of at least one of the areas in paragraphs (1) through (4) of this subsection as requested by the local school system:

(1) Class size requirements in Code Section 20-2-182;

(2) Expenditure controls in Code Section 20-2-171 and categorical allotment requirements in Article 6 of this chapter;

(3) Certification requirements in Code Section 20-2-200;

(4) Salary schedule requirements in Code Section 20-2-212; and

(5) Any other requirements or provisions of this chapter as identified by the local school system and approved by the state board except as provided in subsection (e) of Code Section 20-2-82.

(c) The consequences component of the contract provided in Code Section 20-2-83 shall include:

(1) Interventions or sanctions for failure to meet identified levels of achievement or for not showing specified levels of progress pursuant to Code Section 20-14-41, which may be accelerated; and

(2) Loss of governance of one or more nonperforming schools by the local school system in accordance with Code Section 20-2-84.1.

Consequences shall be incurred upon noncompliance of a local school system with the accountability component of its contract; provided, however, that if a local school system has been in compliance with the accountability component of its contract for at least three consecutive years, consequences shall not be invoked upon the fifth year of the contract, and such school system may request an extension of its contract and corresponding flexibility from the state board. The schedule of interventions or sanctions, including loss of governance, for failure to meet identified levels of achievement or specified levels of progress shall be mutually agreed upon in the contract. If the Office of Student Achievement recommends to the state board that loss of governance not be included in a contract with respect to a high performing school, the contract may provide alternate terms with respect to that school. (Code 1981, § 20-2-84, enacted by Ga. L. 2008, p. 82, § 1/HB 1209.)

#### **20-2-84.1. Loss of governance for nonperforming schools.**

(a) The State Board of Education shall, as provided for in the contract entered into with a local school system pursuant to Code Section 20-2-83, mandate the loss of governance of one or more of its nonperforming schools as a consequence of failure pursuant to paragraph (2) of subsection (c) of Code Section 20-2-84. Such loss of governance may include, but shall not be limited to:

(1) Conversion of a school to charter status with independent school level governance and a governance board with strong parental involvement;

(2) Operation of a school by a successful school system, as defined by the Office of Student Achievement, and pursuant to funding criteria established by the state board; or



(3) Operation of a school by a private entity, nonprofit or for profit, pursuant to a request for proposals issued by the department.

(b) Loss of governance shall be invoked upon the fifth year of the contract if the school system is in noncompliance as set out in the terms of the contract. (Code 1981, § 20-2-84.1, enacted by Ga. L. 2008, p. 82, § 1/HB 1209.)

#### **20-2-84.2. State monitoring.**

(a) The Office of Student Achievement shall revise the single state-wide accountability system established pursuant to paragraph (1) of subsection (a) of Code Section 20-14-26 for submission to the state board for approval to integrate the requirements of this article, to the greatest extent practicable, including, but not limited to, the loss of governance consequences provided for in Code Section 20-2-84.1.

(b) The Office of Student Achievement shall monitor each local school system's progress toward meeting its performance goals in its contract and shall the notify the department if a local school system is not in compliance with such performance goals. The department shall provide support and guidance to school systems not meeting their yearly progress goals. (Code 1981, § 20-2-84.2, enacted by Ga. L. 2008, p. 82, § 1/HB 1209.)

#### **20-2-84.3. Limit on number of local school systems entering into flexibility contract.**

(a) No more than five local school systems in the first calendar year may enter into a contract with the State Board of Education pursuant to this article.

(b) No later than June 30, 2015, each local school system shall either notify the department of its intention to request increased flexibility pursuant to this article or shall comply with subsection (b) of Code Section 20-2-80. (Code 1981, § 20-2-84.3, enacted by Ga. L. 2008, p. 82, § 1/HB 1209; Ga. L. 2011, p. 647, § 2/HB 192.)

**The 2011 amendment**, effective May 13, 2011, substituted "June 30, 2015" for "June 30, 2013" in subsection (b).

#### **20-2-84.4. Other funding options.**

The department may offer other funding options for local school systems which choose to enter into a contract pursuant to this article and may also offer other funding options for charter systems. (Code 1981, § 20-2-84.4, enacted by Ga. L. 2008, p. 82, § 1/HB 1209.)

**20-2-84.5. Applicability to charter systems.**

Except as otherwise provided in Code Section 20-2-84.4, this article shall not apply to a local school system which has become a charter system pursuant to Code Section 20-2-2063.2 or which is in the process of applying to become a charter system. (Code 1981, § 20-2-84.5, enacted by Ga. L. 2008, p. 82, § 1/HB 1209.)

**20-2-84.6. Establishment of rules, regulations, and guidelines.**

The State Board of Education shall be authorized to establish rules, regulations, and guidelines to effect the implementation of this article. (Code 1981, § 20-2-84.6, enacted by Ga. L. 2008, p. 82, § 1/HB 1209.)

**ARTICLE 4A****COMMUNITY INVOLVEMENT IN EDUCATION**

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

**20-2-85. Legislative findings; role of local boards of education and school councils.**

(a) The General Assembly recognizes the need to improve communication and participation of parents and the community in the management and operation of local schools. The General Assembly believes that parent and community support is critical to the success of students and schools. The intent of this article is to bring communities and schools closer together in a spirit of cooperation to solve difficult education problems, improve academic achievement, provide support for teachers and administrators, and bring parents into the school-based decision-making process. The establishment of school councils is intended to help local boards of education develop and nurture participation, bring parents and the community together with teachers and school administrators to create a better understanding of and mutual respect for each other's concerns, and share ideas for school improvement. School councils shall be reflective of the school community.

(b) The management and control of public schools shall be the responsibility of local boards of education, and the school leader shall be the principal. School councils shall provide advice, recommendations, and assistance and represent the community of parents and businesses. Each member of the council, as a community representative, shall be accorded the respect and attention deserving of such election. (Code 1981, § 20-2-85, enacted by Ga. L. 2000, p. 618, § 10.)

**20-2-86. Operation of school councils; training programs; membership; management; roles and responsibilities.**

(a) By October 1, 2001, each local board of education that elects to participate in the Quality Basic Education Program provided for in Article 6 of this chapter shall have a school council operational at a minimum of one high school, one middle school, and one elementary school, except that if a school system does not have its schools organized in this manner the system shall designate schools for a school council as closely to the intent of this Code section as possible. By October 1, 2002, each local board of education shall have a school council operational in a minimum of 50 percent of the schools under its jurisdiction. Such school council shall operate pursuant to this Code section, and the local board of education shall assist all councils in their creation and operation. After two years of successful operation, and upon receiving a high performance designation by the Office of Student Achievement, the local board of education shall devolve to the school council such additional authority in matters of school operation as the local board deems appropriate. By October 1, 2003, each local board of education shall have a school council operational in each of the schools under its jurisdiction. Local boards of education may by board policy allow an alternative to a school council at a charter school, an alternative school, or a psychoeducation center if another governance body or advisory council exists that performs a comparable function.

(b) The local board of education shall provide a training program to assist schools in forming a school council and to assist school councilmembers in the performance of their duties. Such program shall address the organization of councils, their purpose and responsibilities, applicable laws, rules, regulations and meeting procedures, and important state and local school system program requirements and shall provide a model school council organization plan. Additional training programs shall be offered to school councilmembers annually. The State Board of Education shall develop and make available a model school council training program.

(c) Any member may withdraw from the council by delivering to the council a written resignation and submitting a copy to the secretary of the council or school principal. Should school councilmembers determine that a member of the council is no longer active in the council as defined by the bylaws of the council, the council may, by a majority vote, withdraw such person's membership status, effective as of a date determined by the council.

(d) The property and business of the council shall be managed by a minimum of seven school councilmembers of whom a majority shall constitute a quorum. The number of councilmembers shall be specified in the council's bylaws. Members of the school council shall include:



(1) A number of parents or guardians of students enrolled in the school, excluding employees who are parents or guardians of such students, so that such parents or guardians make up a majority of the council and at least two of whom shall be businesspersons;

(2) At least two certificated teachers, excluding any personnel employed in administrative positions, who are employed at least four of the six school segments at the school;

(3) The school principal; and

(4) Other members as specified in the council's bylaws, such as, but not limited to, students, staff, and representatives of school related organizations. Other businesspersons from the local business community may serve on the council and shall be selected by the other members of the school council. Selection procedures for these members and the business members shall be specified in the council's bylaws.

An employee of the local school system may serve as a parent representative on the council of a school in which his or her child is enrolled if such employee works at a different school. With the exception of the principal and the business representatives, members shall be elected by, and from among, the group they represent.

(e) Members of the council shall serve for a term of two years or for such other term as may be specified in the council's bylaws, except as provided in this subsection. The terms of the councilmembers shall be staggered. Upon the expiration of the terms of the two businessperson councilmembers in office on July 1, 2007, these member positions shall subsequently be filled by parent councilmembers; provided, however, that additional businesspersons may serve on the council if provided for in the council's bylaws in accordance with paragraph (4) of subsection (d) of this Code section. Councilmembers may serve more than one term. The office of school councilmember shall be automatically vacated:

(1) If a member shall resign;

(2) If the person holding the office is removed as a member by an action of the council pursuant to this Code section; or

(3) If a member no longer meets the qualifications specified in this Code section.

An election within the electing body for a replacement to fill the remainder of an unexpired term shall be held within 30 days, unless there are 90 days or less remaining in the term in which case the vacancy shall remain unfilled.

(f) All meetings of the school council shall be open to the public. The council shall meet at least four times annually and the number of

meetings shall be specified in the council's bylaws. The council shall also meet at the call of the chairperson, or at the request of a majority of the members of the council. Notice by mail shall be sent to school councilmembers at least seven days prior to a meeting of the council and shall include the date, time, and location of the meeting. School councils shall be subject to Chapter 14 of Title 50, relating to open and public meetings, in the same manner as local boards of education. Each member is authorized to exercise one vote. A quorum must be present in order to conduct official council business. Members of the council shall not receive remuneration to serve on the council or its committees.

(g) After providing public notice at least two weeks before the meeting of each electing body, the principal of each school shall call a meeting of electing bodies for the purpose of selecting members of the school council as required by this Code section. The electing body for the parent members shall consist of all parents and guardians eligible to serve as a parent member of the school council, and the electing body for the teacher members shall consist of all certificated personnel eligible to serve as a teacher member of the school council. The school council shall specify in its bylaws the month in which elections are to be held and shall specify a nomination and election process.

(h) The school council shall adopt such bylaws as it deems appropriate to conduct the business of the council. The adoption of bylaws or changes thereto requires a two-thirds' affirmative vote. The State Board of Education shall develop and make available model school council bylaws.

(i) The school council shall have the same immunity as the local board of education in all matters directly related to the functions of the council.

(j)(1) The officers of the school council shall be a chairperson, vice chairperson, and secretary. Officers of the council shall be elected by the council at the first meeting of the council following the election of school councilmembers; provided, however, that the chairperson shall be a parent member. The officers of the council shall hold office for the term specified in the council's bylaws.

(2) The vice chairperson shall, in the absence or disability of the chairperson, perform the duties and exercise the powers of the chairperson and shall perform such other duties as shall be required by the council.

(3) The secretary shall attend all meetings, act as clerk of the council, and be responsible for recording all votes and minutes of all proceedings in the books to be kept for that purpose. The secretary shall give or cause to be given notice of all meetings of the council and shall perform such other duties as may be prescribed by the council.

(k) The members of the school council are accountable to the constituents they serve and shall:

- (1) Maintain a school-wide perspective on issues;
- (2) Regularly participate in council meetings;
- (3) Participate in information and training programs;
- (4) Act as a link between the school council and the community;
- (5) Encourage the participation of parents and others within the school community; and
- (6) Work to improve student achievement and performance.

(l) The minutes of the council shall be made available to the public, for inspection at the school office, and shall be provided to the councilmembers, each of whom shall receive a copy of such minutes within 20 days following each council meeting. All school councils shall be subject to Article 4 of Chapter 18 of Title 50, relating to the inspection of public records, in the same manner as local boards of education.

(m) At all meetings of the council every question shall be determined by a majority vote of members present, representing a quorum.

(n) The term of office of all councilmembers shall begin and end on the dates specified in the council's bylaws.

(o) The council may appoint committees, study groups, or task forces for such purposes as it deems helpful and may utilize existing or new school advisory groups.

(p) The local board of education shall provide all information not specifically made confidential by law, including school site budget and expenditure information and site average class sizes by grade, to the council as requested or as required by state law or state board rule. The local board shall also designate an employee of the school system to attend council meetings as requested by a school council for the purpose of responding to questions the council may have concerning information provided to it by the local board or actions taken by the local board. The central administration shall be responsive to requests for information from a school council.

(q) The local board of education shall receive and consider all recommendations of the school council, including the annual report, as follows:

- (1) Public notice shall be given to the community of the local board's intent to consider school council reports or recommendations;



(2) Written notice shall be given to the members of the school council at least seven days prior to a local board meeting, along with a notice of intent to consider a council report or recommendation; and

(3) The members of the school council shall be afforded an opportunity to present information in support of the school council's report or recommendation.

The local board of education shall respond to recommendations of the school council within 60 days after being notified in writing of the recommendation.

(r) The school principal shall have the following duties pertaining to school council activities:

(1) Cause to be created a school council pursuant to this Code section by convening the appropriate bodies to select school councilmembers; setting the initial agenda, meeting time, and location; and notifying all school councilmembers of the same;

(2) Perform all of the duties required by law and the bylaws of the council;

(3) Communicate all council requests for information and assistance to the local school superintendent and inform the council of responses or actions of the local school superintendent;

(4) Develop the school improvement plan and school operation plan and submit the plans to the school council for its review, comments, recommendations, and approval; and

(5) Aid in the development of the agenda for each meeting of the council after taking into consideration suggestions of councilmembers and the urgency of school matters. An item may be added to the agenda at the request of three or more councilmembers.

(s) School councils are advisory bodies. The councils shall provide advice and recommendations to the school principal and, where appropriate, the local board of education and local school superintendent on any matter related to student achievement and school improvement, including, but not limited to, the following:

(1) School board policies;

(2) School improvement plans;

(3) Curriculum and assessments;

(4) Report cards issued or audits of the school conducted by the Office of Student Achievement;

(5) Development of a school profile which shall contain data as identified by the council to describe the academic performance,

academic progress, services, awards, interventions, environment, and other such data as the council deems appropriate;

(6) School budget priorities, including school capital improvement plans;

(7) School-community communication strategies;

(8) Methods of involving parents and the community;

(9) Extracurricular activities in the school;

(10) School-based and community services;

(11) Community use of school facilities;

(12) Student discipline and attendance;

(13) Reports from the school principal regarding progress toward the school's student achievement goals, including progress within specific grade levels and subject areas and by school personnel; and

(14) The method and specifications for the delivery of early intervention services or other appropriate services for underachieving students.

(t) The role of the school council in the principal selection process shall be determined in policy written by the local board of education. (Code 1981, § 20-2-86, enacted by Ga. L. 2000, p. 618, § 10; Ga. L. 2004, p. 107, § 1; Ga. L. 2007, p. 259, § 1/SB 72.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2004, "Office of Student Achievement" was substituted for

"Office of Education Accountability" in subsection (a) and in paragraph (s)(4).

## ARTICLE 5

### LOCAL SCHOOL SUPERINTENDENTS

**Cross references.** — Local school superintendents generally, Ga. Const. 1983, Art. VIII, Sec. V, Para. III. Notice of stu-

dent's felony conviction to school superintendent, § 15-6-36.

### OPINIONS OF THE ATTORNEY GENERAL

**School superintendent and county board constitutional offices.** — Ga. Const. 1945, Art. VIII, Sec. IX, Paras. I and II (see now Ga. Const. 1983, Art. VIII, Sec. V, Paras. II and III) did not purport to disturb the comprehensive code of statutory school laws other than to make the offices of the county school superintendent and the county board of education consti-

tutional rather than statutory offices. 1958-59 Op. Att'y Gen. p. 143.

**No statute prohibits county board from employing county superintendent as one of teachers in schools of the county,** so long as the board, in the discharge of the board's duties, finds that the employment of the superintendent as a teacher would not conflict with duties as

the superintendent. 1945-47 Op. Att'y Gen. p. 150.

**County school superintendent is entitled to the benefits of the Teachers' Retirement Act.** 1945-47 Op. Att'y Gen. p. 152.

**County school superintendent not**

**required to retire at 70.** — Elective officers, such as the county school superintendent, under the Teachers' Retirement Act are not required to retire upon attaining the age of 70. 1945-47 Op. Att'y Gen. p. 152.

## RESEARCH REFERENCES

**ALR.** — Matters proper for consideration in appointment of teachers, 94 ALR 1484.

Power of school authorities to transfer teacher from one school or district to another, 103 ALR 1382.

Right of student to hearing on charges before suspension or expulsion from educational institution, 58 ALR2d 903.

### **20-2-100. County school superintendent substituted for county school commissioner.**

Reserved. Repealed by Ga. L. 2012, p. 358, § 5/HB 706, effective July 1, 2012.

**Editor's notes.** — This Code section was based on Ga. L. 1919, p. 288, § 146; Code 1933, § 32-1001.

### **20-2-101. Appointment of school superintendents.**

(a) Superintendents of each school system shall be employed by the local board of education under written contracts for a term of not less than one year and not more than three years. Any provision of any such contract which provides for an extension of the duration of employment thereunder, whether automatic or contingent upon the occurrence of one or more events, shall be void if that extension would result in employment under the contract, as extended, for a period which exceeds three years.

(b)(1) No person shall be eligible to be appointed or employed as superintendent of schools of any county or independent school system unless such person is of good moral character, has never been convicted of any crime involving moral turpitude, and possesses acceptable business or management experience as specified by the Professional Standards Commission or the minimum valid certificate or a letter of eligibility for said certificate required by the Professional Standards Commission.

(2) No person shall be eligible to be appointed, employed, or to serve as superintendent of schools of any county or independent school system who has an immediate family member sitting on the local board of education for such school system or who has an



immediate family member hired as or promoted to a principal, assistant principal, or system administrative staff on or after July 1, 2009, by that school system. As used in this subsection, the term “immediate family member” means a spouse, child, sibling, or parent or the spouse of a child, sibling, or parent whose term as a member of the local board of education or whose employment as a principal, assistant principal, or system administrative staff in the local school system began on or after January 1, 2010. Nothing in this Code section shall affect the employment of any person who is employed by a local school system on or before July 1, 2009, or who is employed by a local school system when an immediate family member becomes the superintendent for that school system.

(c) Superintendents shall have such additional qualifications as may be prescribed by local law or policies of the local board for that school district, not inconsistent with the provisions of this chapter.

(d) At any time during the 12 months immediately preceding the expiration of an appointed school superintendent’s contract or term of office, or when a vacancy in the office of school superintendent occurs, the local board may appoint and employ a successor in accordance with the above provisions of this Code section, notwithstanding that the terms of some or all of the board members will expire before the employment of the superintendent so appointed and employed begins.

(e) A local school superintendent may concurrently serve as a principal, teacher, or in another staff position as directed by the local board in its sole discretion and in accordance with the terms of the contract between the superintendent and the local board. A local school superintendent may also serve concurrently as superintendent of one or more local school systems in accordance with the terms of his or her respective contracts and upon approval by each affected local school system.

(f) No substantive or procedural right regarding employment or termination of employment of a superintendent by a local school system shall be created by this Code section. Rather, the terms and conditions of employment of a school superintendent by a local school system shall be determined exclusively by the contract between those parties and may include, without being limited to, the conditions under and procedures by which that contract may be terminated prior to the end of the term of that contract. (Ga. L. 1919, p. 288, § 147; Ga. L. 1931, p. 124, § 1; Code 1933, § 32-1002; Ga. L. 1993, p. 1279, § 8; Ga. L. 1994, p. 1315, § 1; Ga. L. 1996, p. 1182, § 1; Ga. L. 2008, p. 82, § 2/HB 1209; Ga. L. 2009, p. 782, § 3/HB 251; Ga. L. 2010, p. 452, § 9/SB 84.)

**The 2010 amendment**, effective July 1, 2010, substituted “means a spouse, child, sibling, or parent or the spouse of a child, sibling, or parent whose term as a

member of the local board of education or whose employment as a principal, assistant principal, or system administrative staff in the local school system began on or after January 1, 2010" for "shall have the same meaning as in subsection (c) of Code Section 20-2-51" in the second sentence of paragraph (b)(2).

**History of Code section.** — The language of this Code section is derived from the decision in *Olliff v. Hendrix*, 172 Ga. 497, 158 S.E. 11 (1931).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1993, in the first sentence of subsection (a) "Board of Education" was made lower case.

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION

#### RESIDENCY

#### CONVICTION

#### VACANCIES

### General Consideration

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1551(165) and former Code Sections 20-2-102 and 20-2-107, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Constitutionality of section was raised but was not decided.** See *Clark v. Colquitt County Democratic Executive Comm.*, 158 Ga. 642, 124 S.E. 40 (1924) (decided under former Code 1910, § 1551 (165)).

**Section did not violate former Ga. Const. 1877, Art. XI, Sec. III, Para. I, which required uniformity among county governments.** *Olliff v. Hendrix*, 172 Ga. 497, 158 S.E. 11 (1931).

**Office of county school superintendent was not abolished by the Constitution of 1945;** it was simply changed from a statutory office to a constitutional one. *Saxon v. Bell*, 201 Ga. 797, 41 S.E.2d 536 (1947).

**Office of the county school superintendent is a constitutional office.** — Superintendent is to be elected by the voters of the district, the district being the county of the superintendent's residence, exclusive of any independent school system in existence in the county. *Kemp v. Mitchell County Democratic Executive Comm.*, 216 Ga. 276, 116 S.E.2d 321 (1960).

**Provisions of subsection (f) not violated.** — Because the trial court interpreted the parties' agreement to include the procedures set out in O.C.G.A. § 20-2-940, and because the trial court did not rule that the procedures applied as a matter of law to disputes between superintendents and school systems, the trial court did not violate the directive of O.C.G.A. § 20-2-101(f) that the terms and conditions of a superintendent's employment by a school system were governed by the parties' contract. *Grady County Bd. of Educ. v. Hickerson*, 275 Ga. 580, 571 S.E.2d 391 (2002).

**Bond of county school commissioner binding until successor elected and qualified.** — County board of education could not decline to approve a bond on the ground that the commission issued by the Governor to the county school commissioner was expressly from May 7, 1912, to May 7, 1916, when by the former section the term of office of the commissioner (now the superintendent) was extended to January 1, 1917. The bond would bind the securities thereon for any time after the expiration of the four years until the principal's successor was elected and qualified. *Jones v. Mattox*, 146 Ga. 629, 92 S.E. 202 (1917) (decided under former Code 1910, § 1551 (165)).

**Eligibility to hold office of county superintendent is the eligibility to vote at the election.** *Bower v. Avery*, 172 Ga. 272, 158 S.E. 10 (1931).

**Municipal resident unqualified for county superintendent unless quali-**

**General Consideration (Cont'd)****fied to vote beyond municipal limits.**

— Resident of Eastman is not qualified to hold the office of county school superintendent of Dodge County unless it appears that the resident is a legally qualified voter of some portion of the County of Dodge beyond the territorial limits of the municipality, which has an independent school system. *Phillips v. Rozar*, 172 Ga. 862, 159 S.E. 245 (1931).

**Only qualified voter for officer can hold that office.** — One cannot hold an office unless one is a voter qualified to vote in an election for such office. *Phillips v. Rozard*, 172 Ga. 862, 159 S.E. 245 (1931).

**Legislature could provide that voters of independent system should not vote for county superintendent.** — It was within the competency of the legislature to provide by statute that voters of independent school systems should not vote in the election for county superintendent. *Bower v. Avery*, 172 Ga. 272, 158 S.E. 10 (1931).

**Voters in independent system not qualified in any primary or election.**

— Voters in the independent school district were not qualified to vote in any primary or election for county school superintendent, nor could the voters so qualify, or become qualified, by reason of the fact that the voters' names may have appeared on the general list of registered voters. *Kemp v. Mitchell County Democratic Executive Comm.*, 216 Ga. 276, 116 S.E.2d 321 (1960).

**When election unauthorized, or statutory requirements not complied with, election void.** — When there is no authority to hold the election, or when statutory requirements pertaining to the holding of an election are not complied with, the election is void, and an injunction is a proper remedy. *Kemp v. Mitchell County Democratic Executive Comm.*, 216 Ga. 276, 116 S.E.2d 321 (1960).

**Cited in** *Avery v. Bower*, 170 Ga. 202, 152 S.E. 239 (1930); *Marshall v. Walker*, 183 Ga. 44, 187 S.E. 81 (1936); *Guy v. Nelson*, 202 Ga. 728, 44 S.E.2d 775 (1947).

**Residency**

**In the case of a county school superintendent, the General Assembly**

**does not fix the place of residence**, although this section does prescribe qualifications. *Avery v. Bower*, 170 Ga. 202, 152 S.E. 239 (1930) (see O.C.G.A. § 20-2-101).

**County superintendent not required to reside outside of incorporated city or independent school system.** — General Assembly did not see fit to require county school superintendents, at the time of the superintendents' election or during the superintendents' incumbency, to reside outside of an incorporated city or an independent school system. *Avery v. Bower*, 170 Ga. 202, 152 S.E. 239 (1930).

**Conviction**

**Statutory prohibition against convicted person holding public office.** — Prohibition against a person convicted of a crime involving moral turpitude from holding public office in this state existed by statutory enactment for many years prior to the adoption of the Constitution of 1877. *Parkerson v. Hart*, 200 Ga. 660, 38 S.E.2d 397 (1946).

**"Moral turpitude" defined.** — "Moral turpitude" is an act of baseness, vileness, or depravity in the private and social duties which a man owes to a fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Huff v. Anderson*, 212 Ga. 32, 90 S.E.2d 329 (1955).

**All crimes embraced within the Roman's conception of the "crimen falsi" involve turpitude**, but it is not safe to declare that such crimes only involve turpitude. *Huff v. Anderson*, 212 Ga. 32, 90 S.E.2d 329 (1955).

**Fraud, false pretenses, or larceny after trust involve moral turpitude.**

— Offenses of obtaining money from another by fraud or false pretenses, or larceny after trust, are crimes *malum in se*, involving moral turpitude. *Huff v. Anderson*, 212 Ga. 32, 90 S.E.2d 329 (1955).

**Guilty plea.** — Plea of guilty, accepted and entered by the court, is a "conviction" within the meaning of this section. *Huff v. Anderson*, 212 Ga. 32, 90 S.E.2d 329 (1955) (see O.C.G.A. § 20-2-101).

**Sentencing not required for ineligibility to hold office.** — This section,



which defines the qualifications of county school superintendents, does not require that one be convicted "and sentenced" before one is ineligible to hold the office by reason of a crime involving moral turpitude. *Huff v. Anderson*, 212 Ga. 32, 90 S.E.2d 329 (1955) (see O.C.G.A. § 20-2-101).

Suspension of sentence entered on plea of guilty does not relieve the defendant from being convicted of the offense with which the defendant was charged. *Huff v. Anderson*, 212 Ga. 32, 90 S.E.2d 329 (1955).

Plea of guilty and sentence thereunder foreclosed any investigation of intent, motive, or good faith of the defendant, when the issue was the eligibility of the defendant to hold the office of county superintendent of schools. *Huff v. Anderson*, 212 Ga. 32, 90 S.E.2d 329 (1955).

**Additional qualifications inapplicable to person elected prior to section's passage.** — Any additional qualifications for a superintendent of schools prescribed by this section are not applicable to a person so elected prior to the passage of the act enacting this section. *Mattox v. Jones*, 141 Ga. 649, 81 S.E. 861 (1914) (decided under former Code 1910, § 1551(167)).

### Vacancies

**Office of county superintendent vacant when no authorized and qualified person.** — Office of county superin-

tendent of schools is not vacant so long as there is a person authorized and qualified in the manner provided by law substantially discharging the duties of the office. *Parkerson v. Hart*, 200 Ga. 660, 38 S.E.2d 397 (1946).

**When county board suspends superintendent, office becomes vacant, absent appeal.** — County board of education has the right to suspend the county superintendent of schools for the commission of a crime involving moral turpitude, and during the period of suspension, and in the absence of an appeal, the office becomes vacant, and this would be true regardless of the period of the suspension, whether temporary or permanent. *Parkerson v. Hart*, 200 Ga. 660, 38 S.E.2d 397 (1946).

**Ineligibility of suspended superintendent.** — When a vacancy in the office of county superintendent of schools is created by a proper order of the board of education suspending the present holder of the office and an appointment is made to fill the vacancy, and thereafter the suspended official becomes ineligible under the constitution and laws of this state to hold the office, the appointee will retain the office for the remainder of the term of the former ineligible superintendent under the provisions of this section, unless the appointee's right to the office is sooner terminated in some manner provided by law. *Parkerson v. Hart*, 200 Ga. 660, 38 S.E.2d 397 (1946) (see O.C.G.A. § 20-2-101).

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**Responsibility for filling vacancy in office of county superintendent is placed in the county board** of education, and the State School Superintendent does not have such authority. 1945-47 Op. Att'y Gen. p. 203.

**Vacancy occurring from military duty filled until absence or term of office expires.** — Phrase "a vacancy ... from any cause whatever" in this section should be construed to include a leave of absence for military duty; a vacancy occurring from such an absence should be filled only until the leave of absence expires or the term of office expires, which-

ever occurs first. 1960-61 Op. Att'y Gen. p. 131 (see O.C.G.A. § 20-2-101).

**Residents of independent school district are eligible to be elected or appointed as county superintendent, but are not eligible to vote for county school superintendent.** 1945-47 Op. Att'y Gen. p. 148.

**Qualified voters residing within limits of a quasi-independent school district** are permitted to vote for the county school superintendent. 1945-47 Op. Att'y Gen. p. 148.

**It is a question of fact as to whether school system is independent or**

**quasi-independent**, which must be determined by the local authorities charged with the responsibility of making such a determination. 1948-49 Op. Att'y Gen. p. 120.

**Statutory election requirements cannot be altered by contract.** — When the county board of education and the independent system contract with each other for the education, transportation, and care of pupils, this does not of itself give the residents of the independent system the right to vote in an election held to select the county school superintendent, nor may such right be given by contract; such a contract does not amount to merger. When election requirements are set out by statute, neither individuals nor groups may alter such legislative intent by contract. 1954-56 Op. Att'y Gen. p. 216.

“Quasi-independent” school district is one which, through specific statutory provisions, receives funds through the county school system, but contractual agreements between systems do not make a “quasi-independent” system. 1954-56 Op. Att'y Gen. p. 197.

**Contract duration controlled by local constitutional amendment.** — Duration of the contract of the Cobb County school superintendent is to be determined by the local constitutional amendment, in Ga. Laws 1963, pp. 3778, 3786, and continued by Ga. Laws 1986, pp. 4055-56, and not by the 1993 amendment to O.C.G.A. § 20-2-101. 1993 Op. Att'y Gen. No. U93-11.

**Age of retirement.** — School superintendents are not required to retire at age 70, but may hold their offices at least until successors are elected. 1985 Op. Att'y Gen. No. 85-58, affirming 1945-47 Op. Att'y Gen. p. 152.

Mandatory retirement provision of O.C.G.A. § 47-3-101 is inapplicable to an elected school superintendent; thus, an elected school superintendent who has attained the age of 70 can run for office and serve if elected. 1985 Op. Att'y Gen. No. 85-58. (The mandatory retirement provision was deleted from § 47-3-101 in 1990.)

**Appointment commencing after terms of current board not autho-**

**ized.** — In the absence of clear legislative authority, a local school board may not appoint a new school superintendent for a term beginning after the terms of a majority of the current board expire. 1995 Op. Att'y Gen. No. 95-18.

**Qualifications set out within this section are the only requirements provided by state law.** 1948-49 Op. Att'y Gen. p. 122 (see O.C.G.A. § 20-2-101).

**County superintendent must be citizen of county and qualified voter.** — In addition to the qualifications of former Code 1933, § 32-1002 (see O.C.G.A. § 20-2-101), a county school superintendent, being a county officer within the meaning of former Code 1933, § 89-101 (see O.C.G.A. § 45-2-1), must be a citizen of the county for a period of two years (now 12 months) prior to election and a qualified voter in the county entitled to vote. 1958-59 Op. Att'y Gen. p. 110.

**Age qualifications.** — Since the mandatory retirement provision of O.C.G.A. § 47-3-101 is inapplicable to an elected school superintendent and O.C.G.A. § 20-2-101, which sets forth the qualifications of county school superintendents and includes no age ceiling, an elected school superintendent who has attained the age of 70 can run for office and serve if elected. 1985 Op. Att'y Gen. No. 85-58. (The mandatory retirement provision was deleted from § 47-3-101 in 1990.)

**If elected superintendent from another county desired, local legislation should be enacted.** — Because of uncertainty as to how the courts would interpret former Code 1933, §§ 32-1002 and 89-101 (see O.C.G.A. §§ 20-2-101 and 45-2-1), the safer route to take, should it be desired to permit an elected superintendent of one county to serve as the appointed superintendent of another county, would be to proceed through the enactment of local legislation conditioned upon voter approval under Ga. Const. 1976, Art. VIII, Sec. V, Para. V (see Ga. Const. 1983, Art. VIII, Sec. V, Para. IV), and not to attempt to rely upon the authorization contained in former Code 1933, § 32-1002. 1977 Op. Att'y Gen. No. 77-11.

**“Election” means regular election, not primaries.** — Word “election” contained in this section has reference to the

regular election in which county officers are elected and not primaries. 1952-53 Op. Att'y Gen. p. 74 (see O.C.G.A. § 20-2-101).

This section has reference to the regular election in which county officers are elected and not primaries. 1954-56 Op. Att'y Gen. p. 307 (see O.C.G.A. § 20-2-101).

**Military experience may not lawfully be substituted** for actual teaching or educational administrative experience; this is not to say that an individual whose military duties were in the field of actual teaching or educational administration could not include that time in computing actual teaching or educational administrative experience. 1963-65 Op. Att'y Gen. p. 355.

**Filing certificate prior to running in election satisfies section.** — Filing a certificate under oath at any time prior to qualifying to run in the general election would be sufficient to satisfy this section. 1963-65 Op. Att'y Gen. p. 355 (see O.C.G.A. § 20-2-101).

**Individual appointed to fill vacancy must meet qualifications and file certificate.** — An individual appointed to fill

a vacancy in the office of county school superintendent pending the election of a new superintendent must meet the qualifications of superintendents generally and must file a certificate showing such qualifications with the State Board of Education. 1963-65 Op. Att'y Gen. p. 765.

**School superintendents with one year's experience outside state are not exempt.** — Exemption referred to in O.C.G.A. § 20-2-101, which excludes individuals from having to meet the qualifications set forth in subsection (a) of that section, refers only to independent and county school superintendents with one year's service as a school superintendent in Georgia, whereby superintendents with one year's experience as a superintendent outside the state are not exempted and must meet all the requirements set forth in subsection (a) of that section in order to hold the office of superintendent of schools. 1989 Op. Att'y Gen. 89-34.

**Only exceptions to obligatory language of this section are those which are expressly provided for.** 1963-65 Op. Att'y Gen. p. 355 (see O.C.G.A. § 20-2-101).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 17, 67, 70.

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 124 et seq., 132.

## 20-2-102. Qualifications of county school superintendents; filing proof of certification; exemptions.

Repealed by Ga. L. 1993, p. 1279, § 9, effective April 15, 1993.

**Editor's notes.** — This Code section was based on Ga. L. 1919, p. 288, § 149; Code 1933, § 32-1004; Ga. L. 1939, p. 196, § 1; Ga. L. 1963, p. 356, §§ 1, 2; Ga. L. 1981, Ex.

Sess., p. 8; Ga. L. 1983, p. 3, § 53; Ga. L. 1984, p. 22, § 20; Ga. L. 1986, p. 800, § 1; Ga. L. 1989, p. 1091, § 4; Ga. L. 1990, p. 8, § 20; and Ga. L. 1991, p. 1546, § 2.

## 20-2-103. Oath of local school superintendent.

Before entering upon the discharge of his or her official duties, the local school superintendent shall take and subscribe to the following oath of office:

STATE OF GEORGIA

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, do solemnly swear or affirm that I will truly



perform the duties of local school superintendent of the \_\_\_\_\_ School System to the best of my ability.

I do further swear or affirm:

- (1) That I am not the holder of any unaccounted for public money due this state or any political subdivision or authority thereof;
- (2) That I am not the holder of any office of trust under the government of the United States, any other state, or any foreign state which I am by the laws of the State of Georgia prohibited from holding;
- (3) That I am otherwise qualified to hold said office according to the Constitution and the laws of Georgia; and
- (4) That I will support the Constitution of the United States and of this state.

\_\_\_\_\_  
Signature of local school superintendent

\_\_\_\_\_  
Typed name of member of  
local school superintendent

Sworn and subscribed  
before me this \_\_\_\_\_ day  
of \_\_\_\_\_,  
(SEAL).

(Ga. L. 1919, p. 288, § 152; Code 1933, § 32-1007; Ga. L. 2012, p. 358, § 6/HB 706.)

**The 2012 amendment**, effective July 1, 2012, rewrote this Code section.      **Cross references.** — Official oaths, § 45-3-1 et seq.

RESEARCH REFERENCES

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 131.

20-2-104. Superintendents’ bonds.

Each county and independent system school superintendent must give bond with an approved surety company payable to the county or independent system board of education, the amount to be decided by the board. Such bond must be filed with the judge of the probate court of the county and a copy recorded on the records of the judge of the probate court; and it shall be the duty of the superintendent to send a certified copy of such bond to the State School Superintendent, which copy shall be recorded and kept on file at the State Board of Education. (Ga. L.

1919, p. 288, § 150; Ga. L. 1925, p. 250, § 1; Code 1933, § 32-1005; Ga. L. 1973, p. 577, § 1; Ga. L. 1974, p. 428, § 1.)

### JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1551(168), which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**If bond conforms to section, board must approve.** — If a person has been elected to the position of county school superintendent, and the Governor has duly issued a commission and forwarded the commission to be delivered to the person so elected upon giving bond and taking the oath as prescribed by law, and the bond, conformably to the statute, has been executed, and the amount of the bond and the sufficiency of the security has been approved by the board of education, it is the duty of the latter to approve the bond. *Mattox v. Jones*, 141 Ga. 649, 81 S.E. 861 (1914) (decided under former Code 1910, § 1551 (168)).

**Bond conditioned upon faithful discharge of duties.** — Bond of the county school superintendent is an official bond; there being nothing in the law which

prescribes a different condition, it is properly conditioned upon the faithful discharge of the duties of this office. *Citizens' Bank v. American Sur. Co.*, 174 Ga. 852, 164 S.E. 817 (1932).

**Superintendent liable for county funds lost on account of bank failure.**

— When a county school superintendent makes a general deposit of the funds of the county board of education in a bank, which are lost on account of the subsequent failure of the bank, the superintendent is liable therefor on an official bond as county school superintendent, although the superintendent believed the bank solvent at the time of the deposit, and up to the time of the bank's failure it was so regarded and reputed by the public. *American Sur. Co. v. Ne Smith*, 49 Ga. App. 40, 174 S.E. 262 (1934).

**Sureties on the bond are not liable for money borrowed by county board of education.** *Board of Educ. v. Fudge*, 4 Ga. App. 637, 62 S.E. 154 (1908) (decided under former Code 1910, § 1551 (168)).

**Cited in** *American Sur. Co. v. Citizens' Bank*, 44 Ga. App. 57, 160 S.E. 546 (1931).

### OPINIONS OF THE ATTORNEY GENERAL

**County board may require county school superintendent to give additional bond or to increase security if, in the opinion of the board, the present**

bond is insufficient in amount or is inadequate as to security. 1957 Op. Att'y Gen. p. 105.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, § 130 et seq. 68 Am. Jur. 2d, Schools, § 115.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 131.

**20-2-105. Suspension of county school superintendent; notice and hearing; appeal.**

Repealed by Ga. L. 1993, p. 1279, § 10, effective January 1, 1997.

**Editor's notes.** — This Code section § 1; Ga. L. 1974, p. 1104, § 2; Ga. L. 1983, was based on Ga. L. 1919, p. 288, § 88; p. 3, § 53.  
Code 1933, § 32-912; Ga. L. 1956, p. 747,

### **20-2-106. Removal of county school superintendent; notice and hearing; appeal.**

Repealed by Ga. L. 1993, p. 1279, § 11, effective January 1, 1997.

**Editor's notes.** — This Code section 1189, §§ 2, 3a; Ga. L. 1956, p. 629, § 1; was based on Ga. L. 1919, p. 288, § 153; Ga. L. 1983, p. 3, § 53.  
Code 1933, § 32-1008; Ga. L. 1947, p.

### **20-2-107. Filling vacancies in office of county school superintendent.**

Repealed by Ga. L. 1993, p. 1279, § 12, effective April 15, 1993.

**Editor's notes.** — This Code section p. 635, § 1; Ga. L. 1969, p. 289, § 1; Ga. L. was based on Ga. L. 1887, p. 68, § 27; Ga. 1981, Ex. Sess., p. 8; and Ga. L. 1992, p. 6, L. 1909, p. 154, § 4; Ga. L. 1919, p. 288, § 20.  
§ 148; Code 1933, § 32-1003; Ga. L. 1958,

### **20-2-108. Certification and classification of local school superintendents; compensation.**

Each local school superintendent shall be certified and classified by the Professional Standards Commission as teachers are now classified and certified under Code Section 20-2-200. The superintendents shall receive salaries according to a schedule of minimum salaries fixed by the state board based on classification and certification in the same manner teachers are paid under Code Section 20-2-212; provided, however, that in no event shall the salary of a superintendent be less than \$27,000.00 per year, such salary to be paid in equal monthly installments out of state funds; and in addition thereto, the local board of education shall allow additional compensation for the services to be rendered as may be in its judgment proper and just. (Ga. L. 1919, p. 288, § 151; Code 1933, § 32-1006; Ga. L. 1943, p. 274, § 1; Ga. L. 1946, p. 73, § 1; Ga. L. 1947, p. 1169, § 1; Ga. L. 1951, p. 628, § 1; Ga. L. 1987, p. 3, § 20; Ga. L. 1991, p. 1546, § 3; Ga. L. 1992, p. 1010, § 4; Ga. L. 1993, p. 1667, § 1; Ga. L. 2001, p. 4, § 20.)

## **OPINIONS OF THE ATTORNEY GENERAL**

**State board may pay city superintendents directly.** — Under former Code 1933, § 32-403, the State Board of Education could adopt the administrative policy of paying the state salaries of superintendents of independent city school systems directly to the superintendents in the same manner as now being done in the case of county school superintendents under former Code 1933, § 32-106, provided the specific provisions of the various municipal charters are not in conflict with



this policy; in such an event an exception should be made to the policy so as to conform to the intent of the General Assembly as expressed by that charter. 1958-59 Op. Att'y Gen. p. 111.

**Question of local salary supplement matter within county board's discretion.** — Question of a local supplement to the salary of a county superintendent of schools is a matter within the sound discretion of the local county board of education. 1958-59 Op. Att'y Gen. p. 112.

**Employment contract between county board and county superintendent may lawfully include a life insurance policy,** or any lesser fiscal contribution towards the payment of premiums therefor, as a part of the latter's compensation. 1973 Op. Att'y Gen. No. 73-65.

**Local board may pay contributions for retirement, health insurance, and social security.** — Local school board may contract indirectly to pay and then pay a superintendent's contributions to the Teachers Retirement System for health insurance and for social security. However, local Acts may affect a local school board's ability to make such contributions, and, consequently, the local board attorney should be consulted in each instance. 1981 Op. Att'y Gen. No. 81-55.

**Contributions for benefits must be deducted from salary, which must be increased to cover them.** — For a local school board to pay a local school superintendent's contributions to the Teachers

Retirement System, it must increase the superintendent's salary, since O.C.G.A. § 47-3-41 provides that such contributions must be deducted from the superintendent's salary. However, the increase of the salary would itself be subject to the required deduction, since it would increase the amount of earnable compensation. Thus, the amount of increase required to pay the contribution would obviously have to be more than the amount of the contribution itself. Likewise, for a local school board to make such contributions under the Teachers Health Insurance Plan, it must increase the superintendent's salary, since the law provides that such contributions must be withheld from the superintendent's salary. 1981 Op. Att'y Gen. No. 81-55.

**Furnishing car in lieu of additional compensation not allowed.** — While this section authorizes the county board of education to pay extra or additional compensation to the superintendent, the meaning of this section should not be stretched to allow furnishing of a car in lieu of additional monetary compensation. 1972 Op. Att'y Gen. No. U72-10 (see O.C.G.A. § 20-2-108).

**Elected superintendent's receipt of unused annual leave in lieu of terminal leave.** — County board of education may pay an elected superintendent for unused annual leave as terminal leave when the superintendent vacates office so long as such payment was previously agreed to as part of the superintendent's compensation package. 1989 Op. Att'y Gen. 89-51.

## RESEARCH REFERENCES

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 133, 134.

## 20-2-109. Duties of local school superintendents.

The local school superintendent shall constitute the medium of communication between the State School Superintendent and subordinate local school officers. The local school superintendent shall be the executive officer of the local board of education; shall be the agent of the local board in procuring such school equipment and materials as it may order; shall ensure that the prescribed textbooks are used by students; shall verify all accounts before an application is made to the local board

for an order for payment; and shall keep a record of all official acts, which, together with all the books, papers, and property appertaining to the office, shall be turned over to the successor. It shall be the local school superintendent's duty to enforce all regulations and rules of the State School Superintendent and of the local board according to the laws of the state and the rules and regulations made by the local board that are not in conflict with state laws; and to visit every school within the local school system to become familiar with the studies taught in the schools, observe what advancement is being made by the students, counsel with the faculty, and otherwise aid and assist in the advancement of public education. (Ga. L. 1919, p. 288, § 154; Code 1933, § 32-1009; Ga. L. 1988, p. 612, § 3.)

### JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1551(172), which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**County superintendent cannot contract debt on behalf of county board without previous authority from board.** *State Bd. of Educ. v. Elbert County Bd. of Educ.*, 112 Ga. App. 840, 146 S.E.2d 344 (1965).

County superintendent of schools has no authority to obligate the county board of education under a contract unless authorization has been previously obtained from the board. *Knight v. Troup County Bd. of Educ.*, 144 Ga. App. 634, 242 S.E.2d 263 (1978).

**Superintendent cannot contract debt nor dispose of uncollected funds without board's authority.** — County superintendent of schools cannot contract a debt on behalf of the county board of education without previous authority from the board, nor, in the absence of such authority, can the superintendent dispose of county funds before those funds are collected. *American Ins. Co. v. Seminole County Bd. of Educ.*, 51 Ga. App. 808, 181 S.E. 783 (1935).

**County superintendent is not authorized to disclaim title to property vested in board.** — Authority given to the superintendent by former Code 1933, §§ 32-912 and 32-1009 (see O.C.G.A.

§§ 20-2-57, 20-2-59, 20-2-105, and 20-2-109) to act as agent for the county school board does not include any authority to disclaim title to property vested in the board as public trustees. *Ingram v. Doss*, 217 Ga. 645, 124 S.E.2d 87 (1962).

**Testimony on fiscal affairs of board of education.** — County school superintendent acts as the chief fiscal officer of the board of education; in this capacity the superintendent qualifies to testify concerning the fiscal affairs of the board, and there is no error in the admission of testimony by the county school superintendent outlining the expenditure required of the board of education under the Quality Basic Education Act, O.C.G.A. § 20-2-130 et seq. *Hicks v. Arnall*, 258 Ga. 296, 368 S.E.2d 733 (1988).

**Official immunity applied to superintendent.** — School superintendent did not have a ministerial duty to enforce an eye protection policy passed pursuant to O.C.G.A. § 20-2-109. Neither the policy, the statute, nor a regulation specified steps to be taken by the superintendent to enforce compliance with the policy; thus, the superintendent was entitled to official immunity in a lawsuit resulting from a student's injury during a science experiment. *Dollar v. Grammens*, 294 Ga. App. 888, 670 S.E.2d 555 (2008).

**Mandamus is the proper and exclusive remedy to enforce performance of duties.** *Ferguson v. Smith*, 27 Ga. App. 806, 110 S.E. 42 (1921) (decided under former Code 1910, § 1551 (172)).

**Cited** in *Mathew v. Ellis*, 214 Ga. 665, 107 S.E.2d 181 (1959).

### OPINIONS OF THE ATTORNEY GENERAL

**Power to manage and control county school systems in Georgia rests in the county board of education;** the county school superintendent is obliged to comply with and carry out all rules, regulations, and instructions of the county board of education. 1974 Op. Att'y Gen. No. U74-65.

**Duty to run system upon recall of board of education.** — County school superintendent is charged with the duty

of continuing to effectuate and enforce the rules, regulations, and instructions of the county board of education and continuing to operate the county school system during the period of time between the successful recall of all or a majority of the county board of education and the filling of the vacancies on the county board of education by special election. 1985 Op. Att'y Gen. No. U85-43.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 28, 35, 66, 78, 83, 84, 116, 125 et seq., 321.

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 140 et seq., 399. 78A C.J.S., Schools and School Districts, § 726.

**ALR.** — Validity of regulation by public school authorities as to clothes or personal appearance of pupils, 14 ALR3d 1201.

### 20-2-110. Offices for county school superintendents.

The county authorities of each county shall furnish the county school superintendent thereof an office in the courthouse, provided there is sufficient room in the courthouse after furnishing the county officers with offices as provided by law. (Ga. L. 1919, p. 288, § 157; Code 1933, § 32-1012.)

**Cross references.** — Designation by county governing authority of rooms in courthouse to be occupied by county officers, § 36-9-6.

### JUDICIAL DECISIONS

**Cited** in *Avery v. Bower*, 170 Ga. 202, 152 S.E. 239 (1930).

### OPINIONS OF THE ATTORNEY GENERAL

**Office not furnished if no sufficient room in courthouse.** — This section does not require that an office be furnished the county superintendent of schools if there is not sufficient room in the county courthouse. 1958-59 Op. Att'y Gen. p. 109 (see O.C.G.A. § 20-2-110).

**Office not required to be located in courthouse.** — Office of a county school

superintendent is not required by law to be located in the county courthouse. 1965-66 Op. Att'y Gen. No. 66-31.

**If office provided, county required to furnish and equip.** — If a county has provided its school superintendent with an office in the county courthouse, the county is required to furnish and equip the office. 1963-65 Op. Att'y Gen. p. 669.



### 20-2-111. Administration of oaths by county school superintendents and county board members.

The county school superintendent and members of the county board of education are authorized to administer oaths necessary in transacting school business or in conducting investigations before the county boards when sitting as judicial tribunals for determining controversies arising under school laws. (Ga. L. 1919, p. 288, § 158; Code 1933, § 32-1013.)

#### RESEARCH REFERENCES

**C.J.S.** — 67 C.J.S., Oaths and Affirmations, § 4.

### 20-2-112. Annual reports by county school superintendents to grand jury; inspection of books.

Reserved. Repealed by Ga. L. 1994, p. 607, § 10, effective July 1, 1994.

**Editor's notes.** — This Code section was based on Ga. L. 1919, p. 288, § 159; Code 1933, § 32-1014; Ga. L. 1939, p. 198, § 1; Ga. L. 1943, p. 273, § 1.

### 20-2-113. School systems exempt from article.

Repealed by Ga. L. 1983, p. 3, § 53, effective July 1, 1983.

**Editor's notes.** — This Code section was based on Ga. L. 1919, p. 288, § 162.

## ARTICLE 6

### QUALITY BASIC EDUCATION

**Editor's notes.** — Ga. L. 1985, p. 1657, § 1, effective July 1, 1986, repealed the Code sections formerly codified at this article and enacted the current article. The former article consisted of ten parts as follows: Part 1, §§ 20-2-130, 20-2-131; Part 2, §§ 20-2-150, 20-2-151, 20-2-151.1, 20-2-152 through 20-2-164; Part 3, §§ 20-2-180 through 20-2-190; Part 4, §§ 20-2-200 through 20-2-208; Part 5, §§ 20-2-220 through 20-2-230; Part 6, § 20-2-240; Part 7, § 20-2-250; Part 8, §§ 20-2-260 through 20-2-264; Part 9, §§ 20-2-280 through 20-2-285, 20-2-285.1, 20-2-286 through 20-2-299; and Part 10, §§ 20-2-310, 20-2-311 [repealed].

The former article was based on the

following Acts: Ga. L. 1974, p. 1045, §§ 1-5, 7-58, 60-72, 74; Ga. L. 1975, p. 35, §§ 1, 2; Ga. L. 1975, p. 181, §§ 1, 2; Ga. L. 1975, p. 369, § 1; Ga. L. 1975, p. 539, §§ 1, 3-33, 35; Ga. L. 1975, p. 685, § 1; Ga. L. 1975, p. 812, § 1; Ga. L. 1975, p. 1139, § 1; Ga. L. 1975, p. 1537, § 1; Ga. L. 1976, p. 271, § 1; Ga. L. 1976, p. 506, § 2; Ga. L. 1976, p. 1385, § 1; Ga. L. 1977, p. 972, § 2; Ga. L. 1977, p. 984, § 1; Ga. L. 1977, p. 986, §§ 1, 3; Ga. L. 1977, p. 988, §§ 1, 2; Ga. L. 1977, p. 997, §§ 1, 2; Ga. L. 1977, p. 1001, § 1; Ga. L. 1977, p. 1003, § 1; Ga. L. 1978, p. 917, § 1; Ga. L. 1978, p. 990, § 2; Ga. L. 1978, p. 996, § 1; Ga. L. 1978, p. 1146, § 1; Ga. L. 1978, p. 1485, § 1; Ga. L. 1978, p. 1486, § 1; Ga. L. 1978,

p. 2034, § 1; Ga. L. 1978, p. 2037, § 1; Ga. L. 1978, p. 2039, § 1; Ga. L. 1978, p. 2040, § 1; Ga. L. 1978, p. 2058, § 1; Ga. L. 1979, p. 649, § 1; Ga. L. 1979, p. 657, § 2; Ga. L. 1979, p. 665, §§ 1, 2; Ga. L. 1979, p. 1055, § 1; Ga. L. 1979, p. 1077, § 1; Ga. L. 1979, p. 1279, §§ 1-3; Ga. L. 1980, p. 448, § 1; Ga. L. 1980, p. 450, § 1; Ga. L. 1980, p. 465, § 3; Ga. L. 1980, p. 645, § 8; Ga. L. 1980, p. 698, § 1; Ga. L. 1980, p. 766, § 1; Ga. L. 1980, p. 1010, § 1; Ga. L. 1980, p. 1413, §§ 1-9; Ga. L. 1981, p. 667, § 1; Ga. L. 1981, p. 774, § 1; Ga. L. 1981, p. 1565, § 1; Ga. L. 1982, p. 3, § 20; Ga. L. 1982, p. 603, § 1; Ga. L. 1982, p. 776, §§ 1, 2; Ga. L. 1982, p. 1110, §§ 1, 2; Ga. L. 1983, p. 3, § 16; Ga. L. 1983, p. 745, § 1; Ga. L. 1983, p. 804, § 2; Ga. L. 1983, p. 1218, § 1; Ga. L. 1983, p. 1429, § 1; Ga. L. 1984, p. 643, § 1; Ga. L. 1985, p. 149, § 20; Ga. L. 1985, p. 283, § 1; Ga. L. 1985, p. 708, § 2.

**JUDICIAL DECISIONS**

**Having extended to all children in Georgia the right to an education, the state cannot arbitrarily withdraw the right.** Wells v. Banks, 153 Ga. App. 581, 266 S.E.2d 270 (1980).

**PART 1**

**SHORT TITLE AND PURPOSE**

**Cross references.** — Adequate public education declared a primary obligation of state, to be funded by taxation, Ga. Const. 1983, Art. VIII, Sec. I, Para. I.

**20-2-130. Short title.**

This article shall be known and may be cited as the “Quality Basic Education Act.” (Code 1981, § 20-2-130, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1.)

**JUDICIAL DECISIONS**

**Extracurricular courses.** — Statute does not prevent school boards from offering an extracurricular driver’s education course for a fee. Kristin Nat’l, Inc. v. Board of Educ., 250 Ga. App. 488, 552 S.E.2d 475 (2001).

**20-2-131. Objectives and purposes of program.**

The General Assembly of Georgia, recognizing the need for:

- (1) Implementing a quality basic education curriculum in public schools state wide which ensures that each student is provided ample opportunity to develop competencies necessary for lifelong learning as well as the competencies needed to maintain good physical and mental health, to participate actively in the governing process and community activities, to protect the environment and conserve public and private resources, and to be an effective worker and responsible citizen of high character;

(2) Providing all children and youth in Georgia with access to a quality program which supports their development of essential competencies in order that they may realize their potential;

(3) Providing an equitable public education finance structure which ensures that every student has an opportunity for a quality basic education, regardless of where the student lives, and ensures that all Georgians pay their fair share of this finance structure;

(4) Establishing and maintaining state-wide standards which ensure that each student has access to a quality program;

(5) Making teaching an attractive and rewarding profession in order to attract, retain, and fully utilize highly competent personnel in all public schools of the state;

(6) Providing effective staff development and attractive incentive programs which will motivate public school personnel to enhance their competencies and perform to their potential throughout their career;

(7) Providing local school systems with the incentives, resources, and technical assistance they need to plan and implement improvements in their programs on a continuing basis;

(8) Providing parents and the general public with information on the quality of schools and the achievement of the public school students in Georgia;

(9) Providing appropriate school facilities in which quality educational programs can be offered, particularly in the small and sparsely populated school systems;

(10) Providing an accountability system to ensure that all students are receiving a quality instructional program so that all students can achieve at their highest level;

(11) Providing a seamless education system to allow for the delivery of educational programs at all levels and the movement of students between programs and education agencies as efficiently and effectively as possible and to provide for coordination on a continuing basis between agencies responsible for education services;

(12) Providing a safe school environment so that students can learn and mature without fear of violence or intimidation;

(13) Providing access to nursing services so that teachers can deliver instructional services without the added responsibility of addressing students' nursing needs and so that students can receive nursing services while at school;



(14) Providing academic intervention programs designed to assist students who are performing below grade level in order to increase their mastery of critical academic knowledge and skills;

(15) Providing an alternative educational environment for those students who need a different educational structure in order to properly master critical academic knowledge and skills and to provide an environment where they can stay in school and acquire the knowledge and skills necessary for a productive life;

(16) Providing students with advice and assistance in planning their academic and work careers and achieving those goals;

(17) Providing an evaluation process for all school system personnel to assure the public that personnel are performing at acceptable levels and providing quality educational services to all students;

(18) Providing an environment where parents and the community can participate in school activities and support school personnel as they work with students and address their academic needs;

(19) Providing for parent and community participation in the establishment of school programs, policies, and management so that the school and community are connected in meaningful and productive ways and providing support for teachers and school leaders in addressing the school's needs; and

(20) Providing a means whereby the foregoing might be met in order to provide an opportunity for a quality basic education to the citizens of the state and to discharge the responsibilities and obligations of the state to ensure a literate and informed society

does establish the Quality Basic Education Program. It is declared to be the policy of this state to assure that each Georgian has access to quality instruction, as defined in this article, designed to improve upon a student's learning capacity. It is further declared that no student shall be refused admission into or be excluded from any public school in the state on account of race, creed, color, or national origin. (Code 1981, § 20-2-131, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 2000, p. 618, § 11.)

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

JUDICIAL DECISIONS

**Teacher competency test scores must be reported accurately** in order to assure student access to quality education, and the erroneous reporting of a passing grade could contravene that public policy if an unqualified teacher were employed. However, although the negligent reporting of a failing score could keep

a qualified teacher out of the classroom, student access to quality education would not be impaired so long as other qualified teachers are available. *Harris v. National Evaluation Sys.*, 719 F. Supp. 1081 (N.D. Ga. 1989), *aff'd*, 900 F.2d 266 (11th Cir. 1990).

**Exculpatory clause which teacher signed prior to competency examina-**

**tion.** — Exculpatory clause in a form signed by a teacher prior to taking a teacher competency examination barred the teacher's negligence claim against the testing service after a computer error resulted in the reporting of a failing score. *Harris v. National Evaluation Sys.*, 719 F. Supp. 1081 (N.D. Ga. 1989), *aff'd*, 900 F.2d 266 (11th Cir. 1990).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 6.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 3 et seq.

### 20-2-132. Primary goals of article.

It is the intent of the General Assembly that the primary goals of this article shall be as follows:

(1) A substantial reduction in the number of teachers who leave the teaching profession for reasons of job dissatisfaction;

(2) A decrease in the percentage and number of students who enter school but drop out prior to graduation;

(3) The elimination of emergency teaching certificates and waivers for teaching outside of specialty;

(4) A decrease in the percentage of students who fail the Georgia High School Graduation Test;

(5) A significant increase in the test scores of Georgia students who take the Scholastic Assessment Test (SAT) or the ACT Assessment (ACT);

(6) An increase in the number of students mastering each skill in reading, mathematics, and other subject areas;

(7) An accountability system for education programs that measures efficiency and effectiveness and ensures that programs produce improvement in student achievement scores for all students;

(8) A comprehensive program and financial information system that provides data that allow for the accurate evaluation of program effectiveness;

(9) A seamless education system that allows students to be served in the most effective and efficient way possible;

(10) The elimination of school violence;

(11) A decrease in the percentage of students who perform below grade level;

(12) An increase in parental and community involvement in schools;

(13) Better coordination between education agencies and other organizations providing instructional and related services to students;

(14) A more competent school work force through the effective use of evaluation tools, training, and school improvement teams that promote best practices; and

(15) More flexibility for high-performing schools so that services can be better adapted to student needs. (Code 1981, § 20-2-132, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 2000, p. 618, § 12.)

**Editor's notes.** — Ga. L. 2000, p. 618, may be cited as the 'A Plus Education § 1, not codified by the General Assembly, Reform Act of 2000.' provides: "This Act shall be known and

**20-2-133. Free public instruction; exceptions; eligibility; custody of child; notification of local unit of administration of child's location; transfer and utilization of records; funding.**

(a) Admission to the instructional programs funded under this article shall be free to all eligible children and youth who enroll in such programs within the local school system in which they reside and to children as provided in subsection (b) of this Code section. Therefore, a local school system shall not charge resident students tuition or fees, nor shall such students be required to provide materials or equipment except for items specified by the State Board of Education, as a condition of enrollment or full participation in any instructional program. However, a local school system is authorized to charge nonresident students tuition or fees or a combination thereof; provided, however, that such charges to a student shall not exceed the average locally financed per student cost for the preceding year, excluding the local five mill share funds required pursuant to Code Section 20-2-164; provided, further, that no child in a placement operated by the Department of Human Services or the Department of Behavioral Health and Developmental Disabilities or for which payment is made by the Department of Juvenile Justice, the Department of Human Services or any of its divisions, or the Department of Behavioral Health and Developmental Disabilities and no child who is in the physical or legal custody of the Department of Juvenile Justice, under the care or physical or legal custody of the Department of Human Services or any of its divisions, or under the physical custody of the Department of Behavioral Health and Developmental Disabilities shall be charged



tuition, fees, or a combination thereof. A local school system is further authorized to contract with a nonresident student's system of residence for payment of tuition. The amount of tuition paid directly by the system of residence shall be limited only by the terms of the contract between systems. Local units of administration shall provide textbooks or any other reading materials to each student enrolled in a class which has a course of study that requires the use of such materials by the students.

(b)(1) Any child, except a child in a youth development center as specifically provided in this paragraph, who is in the physical or legal custody of the Department of Juvenile Justice or the Department of Human Services, or in a placement operated by the Department of Human Services or the Department of Behavioral Health and Developmental Disabilities, or in a facility or placement paid for by the Department of Juvenile Justice, the Department of Human Services or any of its divisions, or the Department of Behavioral Health and Developmental Disabilities and who is physically present within the geographical area served by a local unit of administration for any length of time is eligible for enrollment in the educational programs of that local unit of administration; provided, however, that the child meets the age eligibility requirements established by this article. The local unit of administration of the school district in which such child is present shall be responsible for the provision of all educational programs, including special education and related services, at no charge as long as the child is physically present in the school district. A child will be considered in the physical or legal custody of the Department of Juvenile Justice or the Department of Human Services or any of its divisions if custody has been awarded either temporarily or permanently by court order or by voluntary agreement, or if the child has been admitted or placed according to an individualized treatment or service plan of the Department of Human Services. A child will be considered in a facility or placement paid for or operated by the Department of Behavioral Health and Developmental Disabilities if the child has been admitted or placed according to an individualized treatment or service plan of the Department of Behavioral Health and Developmental Disabilities. No child in a youth development center, regardless of his or her custody status, shall be eligible for enrollment in the educational programs of the local unit of administration of the school district in which that youth development center is located. No child or youth in the custody of the Department of Corrections or the Department of Juvenile Justice and confined in a facility as a result of a sentence imposed by a court shall be eligible for enrollment in the educational programs of the local unit of administration of the school district where such child or youth is being held.

(2) Except as otherwise provided in this Code section, placement in a facility by a parent or by another local unit of administration shall not create an obligation, financial or otherwise, on the part of the local unit of administration in which the facility is located to educate the child.

(3) For any child described in paragraph (1) of this subsection, the custodian of or placing agency for the child shall notify the appropriate local unit of administration at least five days in advance of the move, when possible, when the child is to be moved from one local unit of administration to another.

(4) When the custodian of or placing agency for any child notifies a local unit of administration, as provided in paragraph (3) of this subsection, that the child may become eligible for enrollment in the educational programs of a local unit of administration, such local unit of administration shall request the transfer of the educational records and Individualized Education Programs (IEP's) and all education related evaluations, assessments, social histories, and observations of the child from the appropriate local unit of administration no later than ten days after receiving notification. Notwithstanding any other law to the contrary, the custodian of the records has the obligation to transfer these records and the local unit of administration has the right to receive, review, and utilize these records. Notwithstanding any other law to the contrary, upon the request of a local unit of administration responsible for providing educational services to a child described in paragraph (1) of this subsection, the Department of Juvenile Justice, the Department of Behavioral Health and Developmental Disabilities, or the Department of Human Services shall furnish to the local unit of administration all medical and educational records in the possession of the Department of Juvenile Justice, the Department of Behavioral Health and Developmental Disabilities, or the Department of Human Services pertaining to any such child, except where consent of a parent or legal guardian is required in order to authorize the release of any of such records, in which event the Department of Juvenile Justice, the Department of Behavioral Health and Developmental Disabilities, or the Department of Human Services shall obtain such consent from the parent or guardian prior to such release.

(5) Any local unit of administration which serves a child pursuant to paragraph (1) of this subsection shall receive in the form of annual grants in state funding for that child the difference between the actual state funds received for that child pursuant to Code Section 20-2-161 and the reasonable and necessary expenses incurred in educating that child, calculated pursuant to regulations adopted by the State Board of Education. Each local board of education shall be

held harmless by the state from expending local funds for educating students pursuant to this Code section; provided, however, that this shall only apply to students who are unable to leave the facility in which they have been placed.

(6) Enrollment of an eligible child pursuant to this Code section shall be effectuated in accordance with rules and regulations adopted by the State Board of Education.

(7) The Department of Education, the Department of Human Services, the Department of Juvenile Justice, the Department of Behavioral Health and Developmental Disabilities, and the local units of administration where Department of Education, Department of Juvenile Justice, Department of Behavioral Health and Developmental Disabilities, or Department of Human Services placements, facilities, or contract facilities are located shall jointly develop procedures binding on all agencies implementing the provisions of this Code section applicable to children and youth in the physical or legal custody of the Department of Juvenile Justice or under the care or physical or legal custody of the Department of Human Services or under the physical custody of the Department of Behavioral Health and Developmental Disabilities. (Code 1981, § 20-2-133, enacted by Ga. L. 1987, p. 1169, § 1; Ga. L. 1988, p. 612, § 4; Ga. L. 1989, p. 1693, § 1; Ga. L. 1991, p. 1825, § 1; Ga. L. 1992, p. 1983, § 20; Ga. L. 1997, p. 1453, § 1; Ga. L. 1998, p. 1582, § 1; Ga. L. 1999, p. 296, § 24; Ga. L. 2000, p. 618, § 96; Ga. L. 2006, p. 1052, § 1/SB 618; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2010, p. 286, § 15/SB 244.)

**The 2010 amendment**, effective July 1, 2010, throughout this Code section, inserted “or the Department of Behavioral Health and Developmental Disabilities”, inserted “, or the Department of Behavioral Health and Developmental Disabilities”, and inserted “, the Department of Behavioral Health and Development Disabilities,”; in the third sentence of subsection (a), substituted a comma for “or” twice and inserted “, or under the physical custody of the Department of Behavioral Health and Development Disabilities” in the middle; in paragraph (b)(1), substituted a comma for “or” in the first sentence and added the fourth sentence; and,

in paragraph (b)(7), inserted “Department of Behavioral Health and Developmental Disabilities,” near the middle and added “or under the physical custody of the Department of Behavioral Health and Developmental Disabilities” at the end.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1991, “The Department” was substituted for “The State Department” at the beginning of paragraph (b)(7).

**Editor’s notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

## OPINIONS OF THE ATTORNEY GENERAL

**Free education of school-age children.** — School-age children placed in facilities by the Department of Human

Resources or the Department of Children and Youth Services (now the Department of Juvenile Justice) must be provided with



a free education by the local school system in which the facility is located. 1996 Op. Att'y Gen. No. 96-23.

**Withholding transferring of student's record due to unpaid charges not permitted.** — Local school boards are authorized to assess charges against

students for lost and unnecessarily damaged textbooks or library materials, but local school boards may not withhold transferring a student's record to another school system when there are unpaid charges or student fees. 1990 Op. Att'y Gen. No. 90-29.

## RESEARCH REFERENCES

**ALR.** — AIDS infection as affecting right to attend public school, 60 ALR4th 15.

## PART 2

### COMPETENCIES AND CORE CURRICULUM

#### **20-2-140. State Board of Education to establish competencies and uniformly sequenced core curriculum; college and career readiness competency standards.**

(a) The State Board of Education shall establish competencies that each student is expected to master prior to completion of the student's public school education. The state board shall also establish competencies for which each student should be provided opportunities, at the discretion of the student and the student's parents, to master. Based upon these foregoing competencies, the state board shall adopt a uniformly sequenced core curriculum for grades kindergarten through 12. Each local unit of administration shall include this uniformly sequenced core curriculum as the basis for its own curriculum, although each local unit may sequence, expand, and enrich this curriculum to the extent it deems necessary and appropriate for its students and communities.

(b) The State Board of Education, working with the Board of Regents of the University System of Georgia and the State Board of the Technical College System of Georgia, shall establish college and career readiness competency standards in reading, writing, and mathematics aligned with the core curriculum adopted by the state board pursuant to subsection (a) of this Code section with the level of performance necessary to meet college-readiness standards in the state's technical colleges, community colleges, state colleges, and universities and in other advanced training programs.

(c) The State Board of the Technical College System of Georgia shall require its institutions to accept core curriculum coursework completed by high school students for purposes of admission into its institutions. This Code section shall apply beginning with students entering such

postsecondary institutions in the fall of 2013. (Code 1981, § 20-2-140, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 2011, p. 635, § 3/HB 186; Ga. L. 2012, p. 689, § 1/HB 713.)

**The 2011 amendment**, effective May 13, 2011, designated the existing provisions as subsection (a), and, in subsection (a), inserted “sequence,” and inserted a comma after “expand” near the middle of the last sentence; and added subsections (b) and (c).

**The 2012 amendment**, effective July 1, 2012, substituted “2013” for “2012” at the end of subsection (c).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2011, “the State Board of the Technical College System of Georgia” was substituted for “the Board of Technical and Adult Education” in subsections (b) and (c).

**Editor’s notes.** — Ga. L. 2011, p. 635, § 1/HB 186, not codified by the General Assembly, provides: “The General Assembly finds that:

“(1) Our state’s long-term prosperity depends on supporting an education system that is designed to prepare our students for a global economy;

“(2) High school students and parents must understand that they have options for career pathway programs of study that join a college-ready academic core with quality career, technical, and agricultural education studies that result in a high school diploma and preparation for success in advanced training, an associate’s degree, a baccalaureate degree, and a career;

“(3) Local school systems must provide every student with choices that are academically rigorous and aligned to opportunities in high-demand, high-skill, high-wage career fields and to postsecondary career and technical pathways leading to advanced credentials or degrees;

“(4) The State Board of Education, the Board of Regents of the University System of Georgia, and the Board of Technical and Adult Education must work together so that academic courses that are embedded within career, technical, and agricultural

education courses (CTAE) are given appropriate academic credit at the high school level and recognized at the postsecondary level;

“(5) Teachers should be provided with professional development opportunities that enforce the academically rigorous standards in relevant, project based coursework;

“(6) High school students should clearly understand the options for dual high school and postsecondary credit, and the state should properly fund these options;

“(7) Every state education agency, postsecondary institution, and local school system should provide all high school students with opportunities for accelerated learning through dual credit coursework leading to at least six postsecondary credits and have as a collective goal to graduate every student with postsecondary credit;

“(8) Georgia’s strategic industries must be partners in our public education system (secondary and postsecondary) so that they are assured that our high school graduates are prepared for success in the workforce;

“(9) Georgia’s public education system must incorporate many different types of assessments and certificates into their programs so that a student’s skill level is assessed and that it also has meaning to them for postsecondary and career success; and

“(10) Georgia’s students must understand that a high school diploma and some form of postsecondary credential are key to success in the workforce and earning a family living wage.”

**Law reviews.** — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 115 (2011). For article, “Education: Elementary and Secondary Education,” see 28 Ga. St. U. L. Rev. 115 (2011).

## JUDICIAL DECISIONS

**Interscholastic sports not essential to prescribed curriculum.** — Although an important part of a school's program, interscholastic sports are extracurricular

and are not essential to the prescribed curriculum which must be made available to all of Georgia's children. *Smith v. Crim*, 240 Ga. 390, 240 S.E.2d 884 (1977).

## OPINIONS OF THE ATTORNEY GENERAL

**State board may require a lay advisory group's approval as to the textbooks the board selects**, provided that in so doing the board continues to exercise the board's own independent judgment and responsibility in making the final decisions concerning the textbook selection and does not in fact attempt to delegate the board's decision-making powers to the advisory committees. 1977 Op. Att'y Gen. No. 77-13.

**Teaching creationism.** — Teachers may teach only evolution or teachers may teach other theories concerning the origin of life, but the decision about what to teach must have a secular purpose and teachers may not intentionally endorse religion or a religious practice in the teachers' teachings. 1996 Op. Att'y Gen. No. 96-6.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 349 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 1074 et seq.

### 20-2-140.1. Online learning.

The State Board of Education shall establish rules and regulations to maximize the number of students, beginning with students entering ninth grade in the 2014-2015 school year, who complete prior to graduation at least one course containing online learning. This shall be met through an online course offered by the Georgia Virtual School established pursuant to Code Section 20-2-319.1, through an online dual enrollment course offered by a postsecondary institution, or through a provider approved pursuant to subsection (c) of Code Section 20-2-319.4. This shall also include enrollment in a full-time or part-time virtual instruction program pursuant to Code Section 20-2-319.4. (Code 1981, § 20-2-140.1, enacted by Ga. L. 2012, p. 893, § 1/SB 289.)

**Effective date.** — This Code section became effective July 1, 2012.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2012, "Code

Section 20-2-319.4" was substituted for "Code Section 20-2-319.3" at the end of the second and last sentences.

### 20-2-141. Review of competencies and core curriculum.

The State Board of Education shall establish at least once every four years a review of the adopted competencies and uniformly sequenced core curriculum by a task force broadly representative of educational interests and the concerned public. After considering the findings and



recommendations of the task force, the state board shall make such changes in the student competencies lists and core curriculum as it deems in the best interest of the state and its citizens and shall report such proposed changes to local school systems and the General Assembly for review. (Code 1981, § 20-2-141, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 349 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 1074 et seq.

#### **20-2-142. (For effective date, see note) Prescribed courses.**

(a)(1) All elementary and secondary schools which receive in any manner funds from the state shall provide the following course offerings in the manner and at the grade level prescribed by the State Board of Education in its quality core curriculum:

(A) A course of study in the background, history, and development of the federal and state governments and a study of Georgia county and municipal governments; and

(B) A course of study in the history of the United States and in the history of Georgia and in the essentials of the United States and Georgia Constitutions, including the study of American institutions and ideals which shall include a study of the Pledge of Allegiance to the flag of the United States and the Georgia flag in addition to other institutions and ideals.

(2) No student shall be eligible to receive a diploma from a high school unless such student has successfully completed the courses in history and government provided for by this subsection, except as provided in paragraphs (3) and (4) of this subsection. For students moving to Georgia and unable to take the course or courses available to fulfill these requirements in the grade level in which such course or courses are ordinarily offered, the State Board of Education may develop alternative methods, which may include but shall not be limited to an on-line course of study, for such students to learn about and demonstrate an adequate understanding of federal or Georgia history and government.

(3) Disabled students who are otherwise eligible for a special education diploma pursuant to subsection (c) of Code Section 20-2-281 shall not be denied this diploma if they have not successfully completed either or both of these courses; provided, however, that their Individualized Education Programs have not specified that the disabled students must enroll in and successfully complete both of these courses.

(4) The State Board of Education shall promulgate rules and regulations governing the required course of study in the history of Georgia and in the essentials of the Georgia Constitution for students who transfer from another state after having completed the year in which such course or courses are ordinarily offered. The State Board of Education is authorized to provide for exemptions to the required course of study for such students and for students whose parent or parents serve in the armed forces of the United States.

(b) (For effective date, see note) (1) The State Board of Education and the Board of Driver Services shall jointly establish an alcohol and drug course for the purpose of informing the young people of this state of the dangers involved in consuming alcohol or certain drugs in connection with the operation of a motor vehicle. The course shall be designed to generate greater interest in highway safety and accident prevention. The state board and the Board of Driver Services shall jointly, by rules or regulations, determine the contents of the course and its duration. The commissioner of driver services shall make available officers, employees, officials, agents, contractors, or other appropriate representatives as determined by the commissioner of driver services to teach the alcohol and drug course. The alcohol and drug course shall be offered periodically but not less than once annually in the public schools of this state to students in grades nine and above in the manner prescribed by the state board.

(2) The alcohol and drug course required by this subsection shall make available as a part of such course a voluntary parent or guardian participation component which substantially complies with the following requirements:

(A) A joint session with the parent or guardian and child which provides opportunities for parents or guardians to voluntarily participate in the guidance and delivery of the antidrug and antialcohol instruction; and

(B) A separate voluntary component solely for parental or guardian instruction that provides drug prevention strategies, legal accountability information, an opportunity for parent or guardian questions, and any other information that would offer parents or guardians a framework for the protection of their children from alcohol and other drug use.

(3) All schools with grade nine or above which receive funds in any manner from the state shall make available to eligible students and their parents or guardians the alcohol and drug course provided in this subsection.

(4) The commissioner of driver services shall make the alcohol and drug course, and instructors where necessary, available to the private

schools in this state. In addition, the commissioner of driver services shall offer the alcohol and drug course periodically at various locations in this state in the manner provided by the Board of Driver Services. The commissioner shall also be authorized to offer such course electronically online or in such other manner as determined appropriate by the commissioner.

(c) The State Board of Education shall prescribe a course of study in health and physical education for all grades and grade levels in the public schools and shall establish minimum time requirements and standards for its administration. The course shall include instruction concerning the impact of alcohol, tobacco, and drug use upon health. A manual setting out the details of such courses of study shall be prepared or approved by the State School Superintendent in cooperation with the Department of Public Health, the state board, and such expert advisers as they may choose. The Department of Education is directed to assemble or develop instructional resources and materials concerning alcohol and drug abuse, taking into consideration technological enhancements available for utilization of such instructional resources.

(d) The funds allocated under Code Section 20-2-13 shall be used for the purpose of creating and maintaining state educational research services for purposes which shall include, but shall not be limited to, the following:

(1) For the development, production, and procurement of curriculum materials and units of instruction on the scientific facts in regard to the influence and effect of alcohol on human health and behavior and on social and economic conditions, including suggested methods of instruction in ways of working with boys and girls and young people in the various age groups and grade levels of the public schools of the state, as aids to classroom teachers and others responsible for the conduct of the educational program in the public schools;

(2) For the publication, procurement, and dissemination of curriculum materials, units of instruction, and suggested methods of instruction relating to the influence and effect of alcohol on human health and behavior and on social and economic conditions for the school teachers and educational officials in the various local school systems of the state, the Department of Education, and the various educational institutions of the state which are engaged in the education and training of teachers; and

(3) For cooperative work, by and between the state educational research service and the local school systems of the state, the Department of Education, and the educational institutions of the state which are engaged in the education and training of teachers,



through conferences, study groups, demonstrations of methods and materials of instruction, and other means.

(e) The state board is authorized to expend such amounts as may be necessary of the moneys allocated to it under Code Section 20-2-13 for the employment of a specialist or specialists or for contracting for the services of specialists in research and in development and production of curriculum materials and units of instruction on the scientific facts in regard to the influence of alcohol on human health and behavior and on social and economic conditions, including methods of instruction; for the employment of secretarial and clerical assistants and other office expenses; for expenses of conferences, study groups, and demonstrations; and for all other expenses necessary in carrying out the purposes of this Code section.

(f) The state board shall make available uniformly to the public schools of the state and the educational institutions of the state engaged in the education and training of teachers the curriculum materials, the units of instruction, and the suggested methods of instruction which are developed under this Code section. (Code 1981, § 20-2-142, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1990, p. 1972, § 2; Ga. L. 1992, p. 6, § 20; Ga. L. 1996, p. 6, § 20; Ga. L. 1996, p. 1600, § 1; Ga. L. 2000, p. 618, § 13; Ga. L. 2001, p. 4, § 20; Ga. L. 2004, p. 107, § 2; Ga. L. 2005, p. 60, § 20/HB 95; Ga. L. 2005, p. 334, § 9-1/HB 501; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2010, p. 413, § 1/SB 518; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2012, p. 72, § 1/SB 236.)

**Delayed effective date.** — Subsection (b), as set out above, becomes effective January 1, 2013. For version of subsection (b) in effect until January 1, 2013, see the 2012 amendment note.

**The 2010 amendment,** effective July 1, 2010, added “which shall include a study of the Pledge of Allegiance to the flag of the United States and the Georgia flag in addition to other institutions and ideals” at the end of subparagraph (a)(1)(B).

**The 2011 amendment,** effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the third sentence of subsection (c).

**The 2012 amendment,** effective January 1, 2013, in subsection (b), added present paragraph (b)(2), redesignated former paragraph (b)(2) as present paragraph (b)(3), in present paragraph (b)(3), inserted “and their parents or guardians”

and deleted “paragraph (1) of” preceding “this subsection”, redesignated former paragraph (b)(3) as paragraph (b)(4), and, in paragraph (b)(4), substituted “this state” for “the state” in the second sentence, and added the last sentence.

**Cross references.** — Possession of alcoholic beverages on public school grounds, § 3-3-21.1. Sale of alcoholic beverages by or to minors, § 3-3-23 et seq.

**Editor’s notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

**Administrative rules and regulations.** — Instruction in United States and Georgia history and government, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Division of General Instruction, Sec. 160-4-2-.07.

**Law reviews.** — For article on the

2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

### JUDICIAL DECISIONS

**Interscholastic sports not essential to prescribed curriculum.** — Although an important part of a school's program, interscholastic sports are extracurricular and are not essential to the prescribed curriculum which must be made available to all of Georgia's children. *Smith v. Crim*, 240 Ga. 390, 240 S.E.2d 884 (1977).

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**State board may require a lay advisory group's approval as to the textbooks the board selects**, provided that in so doing the board continues to exercise the board's own independent judgment and responsibility in making the final decisions concerning the textbook selection and does not in fact attempt to delegate the board's decision-making powers to the advisory committees. 1977 Op. Att'y Gen. No. 77-13.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 349 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 1074 et seq.

### 20-2-143. Sex education and AIDS prevention instruction; implementation; student exemption.

(a) Each local board of education shall prescribe a course of study in sex education and AIDS prevention instruction for such grades and grade levels in the public school system as shall be determined by the State Board of Education. Such course of study shall implement either the minimum course of study provided for in subsection (b) of this Code section or its equivalent, as approved by the State Board of Education. Each local board of education shall be authorized to supplement and develop the exact approach of content areas of such minimum course of study with such specific curriculum standards as it may deem appropriate. Such standards shall include instruction relating to the handling of peer pressure, the promotion of high self-esteem, local community values, the legal consequences of parenthood, and abstinence from sexual activity as an effective method of prevention of pregnancy, sexually transmitted diseases, and acquired immune deficiency syndrome.

(b) The State Board of Education shall prescribe a minimum course of study in sex education and AIDS prevention instruction which may be included as a part of a course of study in comprehensive health education for such grades and grade levels in the public school system as shall be determined by the state board and shall establish standards for its administration. The course may include instruction concerning human biology, conception, pregnancy, birth, sexually transmitted

diseases, and acquired immune deficiency syndrome. The course shall include instruction concerning the legal consequences of parenthood, including, without being limited to, the legal obligation of both parents to support a child and legal penalties or restrictions upon failure to support a child, including, without being limited to, the possible suspension or revocation of a parent’s driver’s license and occupational or professional licenses. A manual setting out the details of such course of study shall be prepared by or approved by the State School Superintendent in cooperation with the Department of Public Health, the State Board of Education, and such expert advisers as they may choose.

(c) The minimum course of study to be prescribed by the State Board of Education pursuant to subsection (b) of this Code section shall be ready for implementation not later than July 1, 1988. Each local board shall implement either such minimum course of study or its equivalent not later than July 1, 1989. Any local board of education which fails to comply with this subsection shall not be eligible to receive any state funding under this article until such minimum course of study or its equivalent has been implemented.

(d) Any parent or legal guardian of a child to whom the course of study set forth in this Code section is to be taught shall have the right to elect, in writing, that such child not receive such course of study. (Code 1981, § 20-2-143, enacted by Ga. L. 1988, p. 868, § 1; Ga. L. 1998, p. 600, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

**The 2011 amendment**, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the last sentence of subsection (b).

**Law reviews.** — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

**20-2-144. Mandatory instruction concerning alcohol and drug use.**

(a) Each local board of education shall prescribe mandatory instruction concerning alcohol and other drug use in every year in every grade from kindergarten through grade 12 as shall be determined by the State Board of Education. Such course of study shall implement the minimum course of study provided for in subsection (b) of this Code section or its equivalent, as approved by the State Board of Education. Each local board of education may supplement the exact approach of content areas of such minimum course of study with such curriculum standards as it may deem appropriate. Such standards shall include instruction which discourages the use of alcohol, tobacco, and controlled substances and communicates that the use of illicit drugs and improper use of legally obtained drugs is wrong and dangerous.



(b) The State Board of Education shall prescribe a minimum course of study of alcohol and other drug use which may be included as a part of a course of study in comprehensive health education where offered and where appropriate. Instruction also shall be integrated into other curriculum requirements as determined by the State Board of Education. The course shall be age appropriate, shall be sequential in method of study, and shall include the following elements where appropriate in the instruction:

(1) Detailed, factual information regarding physiological, psychological, sociological, and legal aspects of substance abuse;

(2) Detailed information concerning the availability of help and assistance for persons with chemical dependency problems;

(3) Skills needed to evaluate advertisements for, and media portrayals of, alcohol, tobacco, and controlled substances; and

(4) Detailed instruction on the need for, and role of, lawful authority and law-abiding behavior, which instruction may include interacting and working with members of the legal and justice professions.

(c) A manual setting out the details of such course of study shall be prepared by or approved by the State School Superintendent in cooperation with the Department of Public Health, the State Board of Education, the Department of Public Safety, and such expert advisers as they may choose.

(d) The minimum course of study to be prescribed by the State Board of Education pursuant to subsection (b) of this Code section shall be ready for implementation not later than July 1, 1990. Each local board shall implement either such minimum course of study or its equivalent not later than December 31, 1990. Any local board of education which fails to comply with this subsection shall not be eligible to receive any state funding under this article until such minimum course of study or its equivalent has been implemented. (Code 1981, § 20-2-144, enacted by Ga. L. 1990, p. 2043, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

**The 2011 amendment**, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in subsection (c).

**Law reviews.** — For article on the

2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

For note on 1990 enactment of this Code section, see 7 Ga. St. U. L. Rev. 377 (1990).

## **20-2-145. Comprehensive character education program.**

(a) The State Board of Education shall develop by the start of the 1997-1998 school year a comprehensive character education program for levels K-12. This comprehensive character education program shall

be known as the “character curriculum” and shall focus on the students’ development of the following character traits: courage, patriotism, citizenship, honesty, fairness, respect for others, kindness, cooperation, self-respect, self-control, courtesy, compassion, tolerance, diligence, generosity, punctuality, cleanliness, cheerfulness, school pride, respect for the environment, respect for the creator, patience, creativity, sportsmanship, loyalty, perseverance, and virtue. Such program shall also address, by the start of the 1999-2000 school year, methods of discouraging bullying and violent acts against fellow students. Local boards shall implement such a program in all grade levels at the beginning of the 2000-2001 school year and shall provide opportunities for parental involvement in establishing expected outcomes of the character education program.

(b) The Department of Education shall develop character education program workshops designed for employees of local school systems. (Code 1981, § 20-2-145, enacted by Ga. L. 1997, p. 1386, § 1; Ga. L. 1999, p. 362, § 2; Ga. L. 1999, p. 438, § 2.)

**Cross references.** — Designation of official center for character education, § 50-3-79.

**Editor’s notes.** — Ga. L. 1997, p. 1386, § 1.1, not codified by the General Assembly, provides for severability.

Ga. L. 1999, p. 438, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Improved Student Learning Environment and Discipline Act of 1999.’”

**Law reviews.** — For article, “Bullying in Public Schools: The Intersection Between the Student’s Free Speech Rights and the School’s Duty to Protect,” see 62 Mercer L. Rev. 407 (2011).

For note on 1999 amendment to this Code section, see 16 Ga. St. U. L. Rev. 116 (1999).

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**Constitutionality.** — The “respect for the creator” portion of the character education program authorized by O.C.G.A. § 20-2-145 does not violate the separation

of church and state provisions of either the state or federal constitution. 2000 Op. Att’y Gen. No. 2000-9.

### 20-2-145.1. Career education.

The State Board of Education shall prescribe a minimum course of study in career education for students in grades kindergarten through 12. Such minimum course of study shall be age appropriate and shall include, but not be limited to, career awareness, career exploration, and career oriented learning experiences. (Code 1981, § 20-2-145.1, enacted by Ga. L. 2012, p. 689, § 2/HB 713.)

**Effective date.** — This Code section became effective July 1, 2012.

**20-2-146. Scholastic Assessment Test preparatory course; acceptance as elective credit.**

(a) All schools with grade ten or above may make available to eligible students a Scholastic Assessment Test preparatory course. Such course of study shall be designed to offer an opportunity for review and practice to students preparing to take the Scholastic Assessment Test. The course may be offered periodically in the manner prescribed by the local board.

(b) Each local board of education shall be authorized to supplement and develop the exact approach of content areas of such Scholastic Assessment Test preparatory course with such specific curriculum standards as it may deem appropriate.

(c) For the purposes of earning Carnegie unit curriculum credits at the high school level, completion of the Scholastic Assessment Test preparatory course may be accepted by the State Board of Education for one-half unit of elective credit. (Code 1981, § 20-2-146, enacted by Ga. L. 1999, p. 465, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2000, Code Section 20-2-146, as enacted by Ga. L. 2000, p. 792, § 1, was redesignated as Code Section 20-2-147.

**20-2-147. Instructional activities focusing on veterans and the armed forces; closure of schools for Veterans Day.**

On a school day immediately preceding or as close to the annual observance of Veterans Day as practicable as determined by a school's scheduled curriculum, each elementary and secondary school may provide for instructional activity focusing on the contributions of veterans and the importance of the armed forces of the United States. Beginning in the 2010-2011 school year, public elementary and secondary schools may be closed on Veterans Day as provided in paragraph (1) of subsection (c) of Code Section 20-2-168. (Code 1981, § 20-2-147, enacted by Ga. L. 2000, p. 792, § 1; Ga. L. 2009, p. 638, § 5A/HB 193.)

**Cross references.** — Holidays and observances, T. 1, C. 4.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2000, Code Section 20-2-146, as enacted by Ga. L. 2000, p. 792, § 1, was redesignated as Code Section 20-2-147.

**Editor's notes.** — Ga. L. 2009, p. 638,

§ 5B/HB 193, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall apply with respect to conduct on or after May 4, 2009, and conduct prior to May 4, 2009, shall continue to be governed by prior law.



**20-2-148. Elective course in History and Literature of the Old and New Testaments Eras.**

(a) All public schools with grade nine or above may make available to eligible students in grades nine through 12 an elective course in the History and Literature of the Old Testament Era and an elective course in the History and Literature of the New Testament Era. The purpose of such courses shall be to accommodate the rights and desires of those teachers and students who wish to teach and study the Old and New Testaments and to familiarize students with the contents of the Old and New Testaments, the history recorded by the Old and New Testaments, the literary style and structure of the Old and New Testaments, the customs and cultures of the peoples and societies recorded in the Old and New Testaments, and the influence of the Old and New Testaments upon law, history, government, literature, art, music, customs, morals, values, and culture.

(b)(1) No later than February 1, 2007, the State Board of Education shall adopt a curriculum for each course, including objectives, reading materials, and lesson plans, which has been prepared in accordance with the requirements of this subsection.

(2) The book or collection of books commonly known as the Old Testament shall be the basic text for the course in the History and Literature of the Old Testament Era, and the book or collection of books commonly known as the New Testament shall be the basic text for the course in the History and Literature of the New Testament Era. In addition, students may be assigned a range of reading materials for the courses, including selections from secular historical and cultural works and selections from other religious and cultural traditions. The courses shall familiarize students with the customs and cultures of the times and places referred to in the Old and New Testaments. The courses shall familiarize the students with the methods and tools of writing at the times the Old and New Testament books were written, the means by which they were preserved, the languages in which they were written and into which they were translated, and the historical and cultural events which led to the translation of the Old and New Testaments into the English language. The local board of education may recommend which version of the Old or New Testament may be used in the course; provided, however, that the teacher of the course shall not be required to adopt that recommendation but may use the recommended version or another version. No student shall be required to use one version as the sole text of the Old or New Testament. If a student desires to use as the basic text a different version of the Old or New Testament from that chosen by the local board of education or teacher, he or she shall be permitted to do so.

(3) The courses provided for in this Code section shall:

(A) Be taught in an objective and nondevotional manner with no attempt made to indoctrinate students as to either the truth or falsity of the biblical materials or texts from other religious or cultural traditions;

(B) Not include teaching of religious doctrine or sectarian interpretation of the Bible or of texts from other religious or cultural traditions; and

(C) Not disparage or encourage a commitment to a set of religious beliefs.

(c) The provisions of this chapter relating to personnel employed by local units of administration, including without limitation certification requirements, employment, and supervision, shall apply to persons who teach the courses provided for in this Code section. In addition, no person shall be assigned to teach such courses based in whole or in part on any religious test, profession of faith or lack thereof, prior or present religious affiliation or lack of affiliation, or criteria involving particular beliefs or lack thereof about the Bible. Except for these requirements, the qualifications and training of teachers shall be determined by the local boards of education.

(d) On and after July 1, 2007, for the purpose of earning Carnegie unit curriculum credits at the high school level, satisfactory completion of the course in the History and Literature of the Old Testament Era shall be accepted by the State Board of Education for one-half unit of elective credit, and satisfactory completion of the course in the History and Literature of the New Testament Era shall be accepted by the State Board of Education for one-half unit of elective credit; provided, however, that such courses are taught in strict compliance with the requirements of this Code section.

(e) A local board of education may make such arrangements for monitoring the content and teaching of the course in the History and Literature of the Old Testament Era and the course in the History and Literature of the New Testament Era as it deems appropriate.

(f) Nothing in this Code section shall be construed to limit the authority of a local board of education to offer courses regarding the Old Testament or the New Testament that are not in compliance with this Code section; provided, however, that no state funds distributed pursuant to this article shall be expended in connection with such a course that does not meet the requirements of this Code section.

(g) Nothing in this Code section shall be construed to prohibit local boards of education from offering elective courses based upon the books of other religions or societies. In determining whether to offer such

courses, the local board may consider various factors including, but not limited to, student and parent demand for such courses and the impact such books have had upon history and culture. (Code 1981, § 20-2-148, enacted by Ga. L. 2006, p. 233, § 1/SB 79.)

**20-2-149. Program for educating students regarding online Internet safety.**

(a) The Department of Education shall develop a model program for educating students regarding online safety while using the Internet, taking into consideration educational materials on this topic developed by other states as well as any other materials suggested by education experts, child psychologists, and technology companies that promote child online safety issues.

(b) Each local board of education may incorporate into its instructional program a component on online Internet safety to be taught on a schedule as determined by the local board of education. (Code 1981, § 20-2-149, enacted by Ga. L. 2008, p. 810, § 1/SB 474.)

PART 3

EDUCATIONAL PROGRAMS

**Law reviews.** — For article, “Education: Elementary and Secondary Education,” see 28 Ga. St. U. L. Rev. 115 (2011).

**Administrative rules and regulations.** — Grant programs, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Chapter 160-1-4.

Division of general instruction, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Chapter 160-4-2.

Special education, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Chapter 160-4-7.

**20-2-150. Eligibility for enrollment.**

(a) Except as otherwise provided by subsection (b) of this Code section, all children and youth who have attained the age of five years by September 1 shall be eligible for enrollment in the appropriate general education programs authorized in this part unless they attain the age of 20 by September 1 or they have received high school diplomas or the equivalent. This shall specifically include students who have reenrolled after dropping out and who are married, parents, or pregnant. Special education students shall also be eligible for enrollment in appropriate education programs through age 21 or until they receive high school or special education diplomas or the equivalent; provided, however, they were enrolled during the preceding school year and had an approved Individualized Education Program (IEP) which indicated that a successive year of enrollment was needed. Other students who have not yet attained age 21 by September 1 or received high school



diplomas or the equivalent shall be eligible for enrollment in appropriate education programs, provided they have not dropped out of school for one quarter or more. Each local unit of administration shall have the authority to assign students who are married, parents, or pregnant or who have reenrolled after dropping out one quarter or more to programs of instruction within its regular daytime educational program, provided that a local unit of administration may develop and implement special programs of instruction limited to such students within the regular daytime educational program or, at the option of the student, in an alternative program beyond the regular daytime program; provided, further, that such programs of instruction are designed to enable such students to earn course credit toward receiving high school diplomas. These programs may include instruction in prenatal care and child care. Each local unit of administration shall have the authority to provide alternative programs beyond the regular daytime educational program. Unless otherwise provided by law, the State Board of Education shall have the authority to determine the eligibility of students for enrollment. It is declared to be the policy of this state that general and occupational education be integrated into a comprehensive educational program which will contribute to the total development of the individual.

(b) A child who was a legal resident of one or more other states or countries for a period of two years immediately prior to moving to this state and who was legally enrolled in a public kindergarten or first grade, or a kindergarten or first grade accredited by a state or regional association or the equivalent thereof, shall be eligible for enrollment in the appropriate general or special education programs authorized in this part if such child will attain the age of five for kindergarten or six for first grade by December 31 and is otherwise qualified.

(c) All children enrolled for 20 school days or more in the public schools of this state prior to their seventh birthday shall become subject to all of the provisions of this article, the provisions of Code Sections 20-2-690 through 20-2-701, and the rules and regulations of the State Board of Education relating to compulsory school attendance even though they have not attained seven years of age.

(d) No child or youth shall be admitted to any public school of the state until the parent or guardian provides to the proper school authorities an official copy of that child's social security number which shall be incorporated into the official school records pertaining to that child or youth. Each local unit of administration shall establish and implement a plan for providing the public appropriate notice of the information required of every student under its jurisdiction prior to the beginning of each school year. School authorities may provisionally admit a child for whom an official social security number has not been

provided if the parent or guardian completes a postage-paid application for a social security number at the time of enrollment. A parent or guardian who objects to the incorporation of the social security number into the school records of a child may have the requirement waived by signing a statement objecting to the requirement. (Code 1981, § 20-2-150, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1990, p. 1354, § 1; Ga. L. 1992, p. 2200, § 1; Ga. L. 1993, p. 1279, § 12.1; Ga. L. 2012, p. 358, § 7/HB 706.) ~

**The 2012 amendment**, effective July 1, 2012, in subsection (b), inserted “or countries” near the beginning and inserted “or the equivalent thereof” near the middle.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2009, “20-2-701” was substituted for “20-2-702” in subsection (c).

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### ANALYSIS

#### GENERAL CONSIDERATION MARRIED STUDENTS

##### General Consideration

**Editor’s notes.** — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 32-937, which authorized local boards of education to promulgate rules and regulations concerning the right of married students to attend school, and former § 20-2-151, which were subsequently repealed but were succeeded by provisions in this Code section, were included in the annotations for this Code section.

**Age limitations applicable to carrying out state funded programs only.** — Age limitations of this section are applicable not to the broad constitutional authority of a local school system to manage and control its own school programs and affairs at its own expense, but to the carrying out of the state funded programs. 1978 Op. Att’y Gen. No. 78-7 (decided under former Code 1933, § 32-937).

**Education of nonresidents.** — Georgia schools may educate children who reside with their parents in another state on the condition that tuition is paid for the children’s education. 1980 Op. Att’y Gen. No. 152 (decided under former Code 1933, § 32-937).

##### Married Students

**Section permits board to suspend married student for definite and reasonable length of time.** — Absent consideration of any question on constitutionality of such a rule, this section permits a county board of education to promulgate a rule or regulation suspending (for a definite and reasonable length of time) married students from attending the public schools of a county. 1963-65 Op. Att’y Gen. p. 276 (decided under former Code 1933, § 32-937).

**Board may adopt policy excluding married students if related to legitimate educational purpose.** — Local board may adopt a policy excluding married students from attending school if, and only if, that policy is reasonably related to some legitimate educational purpose; a policy which would permanently and totally exclude any married student, male or female, from attending school simply because he or she is married would be an unconstitutional and a void application of this section. 1968 Op. Att’y Gen. No. 68-391 (decided under former Code 1933, § 32-937).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 255 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 962 et seq., 987 et seq., 1004 et seq.

**ALR.** — AIDS infection as affecting right to attend public school, 60 ALR4th 15.

## 20-2-151. General and career education programs; purpose; authorized programs.

(a) The primary purpose for the general and career education programs is to provide the children and youth of Georgia with a quality opportunity to master student competencies adopted by the State Board of Education through instruction which is based upon the uniformly sequenced core curriculum.

(b) The following general and career education programs are authorized for purposes of funding under this article:

(1)(A) All local school systems may offer a full-day kindergarten program. For purposes of this subsection, the term “full-day kindergarten program” means a student is provided classroom instruction for a minimum of four and one-half hours daily for a 180 day school year, or the equivalent thereof as determined in accordance with State Board of Education guidelines.

(B) It is the policy of this state that the purposes of the kindergarten program shall be to provide all children with an equal opportunity to become prepared for a successful first grade experience and to acquire the foundation for academic progress throughout the students’ educational careers. To be eligible for enrollment in a state supported kindergarten program, a child must attain the age of five by September 1, except as otherwise provided by subsection (b) of Code Section 20-2-150;

(2) It is the policy of this state that the purpose of the primary grades program shall be mastery by enrolled students of the essential basic skills and knowledge which will enable them to achieve more advanced skills and knowledge offered at the higher grade levels. For purposes of funding under this article, the primary grades program shall include grades one, two, and three. To be eligible for enrollment in the first grade of a state supported primary grades program, a child must attain the age of six by September 1, except as otherwise provided by subsection (b) of Code Section 20-2-150. The State Board of Education shall adopt an instrument or instruments, procedures, and policies necessary to assess the first grade readiness of children enrolled in Georgia’s public school kindergarten programs pursuant to Code Section 20-2-281. Readiness information obtained by the



instrument or instruments adopted by the state board shall be used by local school systems in concert with teacher recommendations and other relevant information to make appropriate student grade placement decisions. The Department of Education shall develop guidelines for utilization of the instrument or instruments in grade placement decisions and shall provide such guidelines to local school systems. The guidelines shall include information pertinent to consideration of the placement of students who have been identified as being disabled or limited-English-proficient. Whenever the decision is made not to promote a child to the first grade, the local school system shall document the reasons for the decision not to promote, according to guidelines established by the board. The State School Superintendent shall annually provide a report summarizing the results of the readiness of first grade Georgia public school kindergarten children. No student shall remain in kindergarten for more than two years;

(3) It is the policy of this state that the primary purposes of the middle grades program shall be assuring the mastery of essential basic skills and knowledge, assisting students in the transition from childhood to adolescence, and preparing students for the selection of programs and courses consistent with their abilities and interests when they enter high school, as well as providing an opportunity for mastery of essential but more advanced skills and knowledge. For purposes of funding under this article, the middle grades program shall include grades four, five, six, seven, and eight; and

(4)(A) It is the policy of this state that the primary purposes of the high school programs shall be to prepare students for the continuation of their education beyond high school and for entry into their chosen career fields as well as to prepare them to take their places in society as young adults. The following high school programs for grades nine, ten, 11, and 12 are authorized for purposes of funding under this article:

- (i) The high school education program; and
- (ii) The vocational laboratory program.

(B) As a reflection of the reduced teacher-student ratios and more extensive material and equipment needed for effective laboratory courses compared to courses with no or only limited laboratory experiences, the vocational laboratory program shall be funded at a higher level than the high school general education program. The state board shall adopt criteria which courses must meet in order to qualify for the vocational laboratory program. (Code 1981, § 20-2-151, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1990, p. 1359, § 1; Ga. L. 1995, p. 1302,

§ 14; Ga. L. 2000, p. 618, § 14; Ga. L. 2001, p. 4, § 20; Ga. L. 2009, p. 638, § 1/HB 193.)

**Cross references.** — Vocational training generally, T. 20, C. 4. Vocational rehabilitation services provided by Department of Labor, T. 34, C. 15.

**Editor's notes.** — Ga. L. 2000, p. 618,

§ 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

### OPINIONS OF THE ATTORNEY GENERAL

**Unauthorized use of funds.** — Contributions of local school systems to the health insurance fund for noncertificated

personnel may not be taken from those funds allocated for kindergarten programs. 1985 Op. Att'y Gen. No. 85-12.

### RESEARCH REFERENCES

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 1066, 1068 et seq.

#### 20-2-151.1. American Sign Language as foreign language for college preparatory curriculum and for Carnegie unit elective credits.

(a) For the purpose of fulfilling the foreign language requirements for a college preparatory curriculum seal of endorsement on a high school diploma, a demonstrated proficiency in American Sign Language shall be accepted as a foreign language for any student by all local boards of education and the State Board of Education. A demonstrated proficiency in American Sign Language shall be accepted as the equivalent of the required two units of a foreign language.

(b) For the purpose of earning Carnegie unit curriculum credits at the high school level, American Sign Language may be accepted by the State Board of Education for two or more units of elective credit or for two or more units of foreign language credit, pursuant to subsection (a) of this Code section. (Code 1981, § 20-2-151.1, enacted by Ga. L. 1992, p. 2519, § 1; Ga. L. 2007, p. 290, § 1/SB 170.)

**Editor's notes.** — Ga. L. 2007, p. 290, § 1/SB 170, which amended this Code section, purported to amend Code Section

20-1-151.1 but actually amended Code Section 20-2-151.1.

#### 20-2-151.2. Driver education course accepted for Carnegie unit elective credits.

For the purpose of earning Carnegie unit curriculum credits at the high school level, satisfactory completion, on or after January 1, 1999, of a driver education course in a driver training school and under the instruction of a driver training instructor licensed by the department

under Chapter 13 of Title 43, "The Driver Training School License Act," may be accepted by the State Board of Education for one-half unit of elective credit for any student. (Code 1981, § 20-2-151.2, enacted by Ga. L. 1998, p. 1520, § 1.)

**Cross references.** — Tax credit for private driver education courses of minors, § 48-7-29.5.

## **20-2-152. Special education services.**

(a) All children and youth who are eligible for a general and career education program under Code Section 20-2-151 and who have special educational needs shall also be eligible for special education services. Children from birth through four years of age, whose disabling condition is so severe as to necessitate early education intervention, may be eligible for special education services through programs operated by state schools for the handicapped, the psychoeducational program, or through programs financed with local or federal funds or with funds specifically appropriated by the General Assembly for this purpose. Eligible children and youth are defined as those who have emotional, physical, communicative, or intellectual deviations, or a combination thereof, to the degree that there is interference with school achievements or adjustments or prevention of full academic attainment and who require modifications or alterations in their educational programs. Special education shall include children who are classified as intellectually gifted, mentally disabled, behavior disordered, specific learning disabled, orthopedically disabled, other health impaired, hearing impaired, speech-language disordered, visually impaired, severely emotionally disturbed, and deaf-blind and who have any other areas of special needs which may be identified. The State Board of Education shall adopt classification criteria for each area of special education to be served on a state-wide basis. The state board shall adopt the criteria used to determine eligibility of students for state funded special education programs. The state board shall adopt maximum class sizes by classification of special education pursuant to subsection (i) of Code Section 20-2-182 which are equal to or greater than the class sizes used to develop the program weights as set forth in subsection (b) of Code Section 20-2-161.

(a.1) The criteria adopted by the state board to determine the eligibility of students for state funded special education programs for the intellectually gifted, Category VI pursuant to paragraph (6) of subsection (d) of this Code section, shall authorize local boards of education to use:

(1) The criteria used on July 1, 1993, as amended by state board or state department regulation from time to time; and



(2) Multiple eligibility criteria which include:

- (A) Evidence of student work product or performance;
- (B) Data from teacher, parent, or peer observation; and
- (C) Evidence of student performance on nationally normed standardized tests of mental ability, achievement, and creativity.

A student's eligibility may be determined under either paragraph (1) or (2) of this subsection. The multiple eligibility criteria shall be implemented as appropriate staff development is completed, but not later than August 1, 1998. A student who has been determined before July 1, 1994, to be eligible for state funded special education programs for the intellectually gifted shall not be required to satisfy any additional eligibility criteria or information documentation as a result of this subsection.

(b) Local school systems shall, subject to any limitations specified in this Code section, provide special education programs for all eligible students with special needs who are residents of their local school systems, either by establishing and maintaining such educational facilities and employing such professional workers as are needed by these students or by contracting with other local school systems, regional educational service agencies, or other qualified public or private institutions for such services.

(c)(1) The State Board of Education shall provide for the funding which has been approved by the General Assembly for this purpose for special education programs for students with disabling conditions which are either of such low incidence or of such severity that it is unfeasible or impractical to provide needed educational services through programs offered by local school systems. The state board may provide such educational services with funds specifically approved by the General Assembly for this purpose by:

(A) Providing grants directly to regional educational service agencies for provision of services;

(B) Either directly contracting with or making grants to or authorizing local units of administration to contract with or make grants to suitable private or public institutions, inside or outside this state, for the provision of such services; provided, however, that the educational and related services of the child must be provided by professionals, such as teachers, school psychologists, speech therapists, physical and occupational therapists, and audiologists who meet the certification or licensing standards of their profession in the state in which the institution is located;

(C) Authorizing local units of administration to contract with suitable public agencies and departments, including institutions in

which eligible children are confined and out-patient centers serving eligible children, inside and outside this state, for the provision of such services;

(D) Entering into reciprocal agreements with other states or political subdivisions thereof for the provision of such services; or

(E) Operating the Georgia School for the Deaf, the Georgia Academy for the Blind, the Atlanta Area School for the Deaf, and other special schools as approved by the General Assembly.

(2) The state board may promulgate rules, regulations, and standards and establish the terms and conditions governing the provision of state aid provided for this purpose by the General Assembly under this subsection and perform any and all acts necessary or proper to carry out the provisions, intent, and purpose of this subsection.

(d) For purposes of funding under this article, the following special education categories are authorized for the local units of administration of this state:

(1) Category I: self-contained specific learning disabled and self-contained speech-language disordered;

(2) Category II: mildly mentally disabled;

(3) Category III: behavior disordered, moderately mentally disabled, severely mentally disabled, resourced specific learning disabled, resourced speech-language disordered, self-contained hearing impaired and deaf, self-contained orthopedically disabled, and self-contained other health impaired;

(4) Category IV: deaf-blind, profoundly mentally disabled, visually impaired and blind, resourced hearing impaired and deaf, resourced orthopedically disabled, and resourced other health impaired;

(5) Category V: those special education students classified as being in Categories I through IV, as defined in this subsection, whose Individualized Educational Programs specify specially designed instruction or supplementary aids or services in alternative placements, in the least restrictive environment, including the regular classroom and who receive such services from personnel such as paraprofessionals, interpreters, job coaches, and other assistive personnel; and

(6) Category VI: intellectually gifted. (Code 1981, § 20-2-152, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1988, p. 612, § 5; Ga. L. 1991, p. 1531, § 1; Ga. L. 1994, p. 1106, § 1; Ga. L. 1995, p. 1302, §§ 14, 17; Ga. L. 1996, p. 1422, § 1; Ga. L. 1997, p. 143, § 20; Ga. L. 2012, p. 775, § 20/HB 942.)

**The 2012 amendment,** effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (d)(5).

**Cross references.** — Establishment of special schools, Ga. Const. 1983, Art. VIII, Sec. V, Para. VII. Declared policy of state to provide adequate mental health and mental retardation services through Department of Human Resources and county boards of health, § 37-2-1. Habilitation of the developmentally disabled generally, T. 37, C. 4.

**Administrative rules and regulations.** — Special education, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Chapter 160-4-7.

**Law reviews.** — For article, “Simplify You, Classify You’: Stigma, Stereotypes and Civil Rights in Disability Classification Systems,” see 25 Ga. St. U. L. Rev. 607 (2009).

## JUDICIAL DECISIONS

**“Residency” defined.** — School system is obligated to provide educational services only to students who reside within that particular school system’s district. The term “residency,” in the context

of education, would require at least physical presence or perhaps even physical presence with intent to remain. Hall ex rel. Allread v. Freeman, 700 F. Supp. 1106 (N.D. Ga. 1987).

## OPINIONS OF THE ATTORNEY GENERAL

**Application of eligibility standards.** — Eligibility standards for programs for gifted children may be applied in a flexible manner, and there is no requirement that the eligibility standards be applied uniformly throughout the state. 1986 Op. Att’y Gen. No. U86-1.

**Local systems not confined to geographic boundaries in providing program for substantially impaired hearing children.** — While local school systems in Georgia are legally obligated to provide a special education program for children whose hearing is substantially impaired, they are not necessarily confined to their own geographic boundaries in so doing, but may furnish such special education services through a contract with a cooperative educational service agency. 1977 Op. Att’y Gen. No. 77-35.

**No statutory impediment to providing psychological services to “eligible” private school or nonschool children.** — There is no statutory impediment to the providing of psychological services to private school or nonschool children provided that the children are “eligible” by reason of age and residence to participate in a school system’s general

school or preschool program, but the degree to which such private school or nonschool children are to be permitted to receive psychological services is a matter of policy which addresses itself to the discretion of the state and local boards of education. 1976 Op. Att’y Gen. No. 76-118.

**State board authorized to provide additional funds for additional services.** — State Board of Education has the authority to allot additional funds to local boards of education for the purpose of providing additional services, such as pupil transportation, to deaf and hard-of-hearing children in attendance at the Atlanta Area School for the Deaf. 1977 Op. Att’y Gen. No. 77-35.

**Eligibility of Department of Children and Youth Services (now Department of Juvenile Justice) to receive tuition grant payments.** — Department of Children and Youth Services (now the Department of Juvenile Justice) is eligible to receive tuition grants for disabled students whose Individualized Education Programs place them in private residential programs for educational reasons. 1995 Op. Att’y Gen. No. 95-6.



## RESEARCH REFERENCES

**ALR.** — Validity of, and sufficiency of compliance with, state standards for approval of private school to receive public placements of students or reimbursement for their educational costs, 48 ALR4th 1231.

Special education requirements of gifted students, 115 ALR5th 183.

What constitutes services that must be provided by federally assisted schools under the Individuals with Disabilities Education Act (IDEA) (20 USCA § 1400 et seq.), 161 ALR Fed. 1.

Availability of damages in action to remedy violations of Individuals with Disabilities Education Act (20 U.S.C.A. § 1400 et seq.), 165 ALR Fed. 463.

What constitutes reasonable accommodation under federal statutes protecting rights of disabled individual, regarding educational program or school rules as applied to learning disabled student, 166 ALR Fed. 503.

**20-2-152.1. Deaf Child’s Bill of Rights; definition of “communication mode or language”; school systems to take into account specific communication needs of deaf students; explanation of educational options to parents; instruction in particular communication mode or language.**

(a) As used in this Code section, the term “communication mode or language” means one or more of the following systems or methods of communication applicable to deaf and hard-of-hearing children:

- (1) American Sign Language;
- (2) English-based manual or sign systems; or
- (3) Oral, aural, or speech-based training.

(b) In developing an individualized education program (IEP) pursuant to Code Section 20-2-152 for a child who is deaf or hard of hearing, in addition to any other requirements established by the state board, the local school system shall consider the related services and program options that provide the child with an appropriate and equal opportunity for communication access. The school system shall consider the child’s specific communication needs and, to the extent possible under subsection (g) of this Code section, address those needs as appropriate in the child’s individualized education program. In considering the child’s needs, the school system shall expressly consider the following:

- (1) The child’s individual communication mode or language;
- (2) The availability to the child of a sufficient number of age, cognitive, and language peers of similar abilities;
- (3) The availability to the child of deaf or hard-of-hearing adult models of the child’s communication mode or language;

(4) The provision of appropriate, direct, and ongoing language access to teachers of the deaf and hard of hearing and interpreters and other specialists who are proficient in the child's primary communication mode or language; and

(5) The provision of communication-accessible academic instruction, school services, and extracurricular activities.

(c) To enable a parent or guardian to make informed decisions concerning which educational options are best suited to the parent's or guardian's child, all of the educational options provided by the school system and available to the child at the time the child's individualized education program is prepared shall be explained to the parent or guardian.

(d) No deaf or hard-of-hearing child shall be denied the opportunity for instruction in a particular communication mode or language solely because:

(1) The child has some remaining hearing;

(2) The child's parent or guardian is not fluent in the communication mode or language being taught; or

(3) The child has previous experience with some other communication mode or language.

(e) Nothing in this Code section shall preclude instruction in more than one communication mode or language for any particular child. Any child for whom instruction in a particular communication mode or language is determined to be beneficial shall receive such instruction as part of the child's individualized education program.

(f) Notwithstanding the provisions of paragraph (2) of subsection (b) of this Code section, nothing in this Code section shall be construed to require that a specific number of peers be provided for a child who is deaf or hard of hearing.

(g) Nothing in this Code section shall require a school system to expend additional resources or hire additional personnel to implement the provisions of this Code section. (Code 1981, § 20-2-152.1, enacted by Ga. L. 2007, p. 279, § 3/SB 168.)

**Editor's notes.** — Ga. L. 2007, p. 279, § 1/SB 168, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Deaf Child's Bill of Rights Act.'"

Ga. L. 2007, p. 279, § 2/SB 168, not codified by the General Assembly, provides: "(a) The General Assembly finds that:

"(1) Students with low-incidence disabilities, as a group, make up less than 1 percent of the total state-wide enrollments for kindergarten through grade twelve; and

"(2) Students with low-incidence disabilities require highly specialized services, equipment, and materials.

“(b) The General Assembly further finds that:

“(1) Deafness involves the most basic of human needs, which is the ability to communicate with other human beings. Many deaf and hard-of-hearing children use an appropriate communication mode, sign language, which may be their primary language, while others express and receive language orally and aurally, with or without visual signs or clues. Still others, typically young deaf and hard-of-hearing children, lack any significant language skills. It is essential for the well-being and growth of deaf and hard-of-hearing children that educational programs recognize the unique nature of deafness and ensure that all deaf and hard-of-hearing children have appropriate, ongoing, and fully accessible educational opportunities;

“(2) It is essential that deaf and hard-of-hearing children, like all children, have an education in which their unique communication mode is respected, utilized, and developed to an appropriate level of proficiency;

“(3) It is essential that deaf and hard-of-hearing children have an education in which teachers of the deaf and hard of hearing, psychologists, speech therapists, assessors, administrators, and other special education personnel understand the unique nature of deafness and are specifically trained to work with deaf and hard-of-hearing pupils. It is essential that deaf and hard-of-hearing children have an education in which teachers of the deaf and hard of hearing are proficient in the primary language mode of those children;

“(4) It is essential that deaf and

hard-of-hearing children, like all children, have an education with a sufficient number of language mode peers with whom they can communicate directly and who are of the same, or approximately the same, age and ability level;

“(5) It is essential that deaf and hard-of-hearing children have an education in which their parents or guardians and, where appropriate, deaf and hard-of-hearing people are involved in determining the extent, content, and purpose of programs;

“(6) Deaf and hard-of-hearing children would benefit from an education in which they are exposed to deaf and hard-of-hearing role models;

“(7) It is essential that deaf and hard-of-hearing children, like all children, have programs in which they have direct and appropriate access to all components of the educational process, including, but not limited to, recess, lunch, and extracurricular social and athletic activities;

“(8) It is essential that deaf and hard-of-hearing children, like all children, have programs in which their unique vocational needs are provided for, including appropriate research, curricula, programs, staff, and outreach;

“(9) Each deaf or hard-of-hearing child should have a determination of the least restrictive environment that takes into consideration these legislative findings and declarations; and

“(10) Given their unique communication needs, deaf and hard-of-hearing children would benefit from the development and implementation of state and regional programs for children with low-incidence disabilities.”

## **20-2-153. Early intervention program for students at risk of not reaching or maintaining academic grade level.**

(a) The State Board of Education shall create and each local board of education shall provide an early intervention program to serve students in kindergarten through grade five. The kindergarten early intervention program shall serve students enrolled in kindergarten. The primary grades early intervention program shall serve students enrolled in grades one through three. The upper elementary grades early intervention program shall serve students in grades four through five.



(b) The early intervention program shall serve students who are at risk of not reaching or maintaining academic grade level, including but not limited to students who are identified through the first grade readiness assessment required by Code Sections 20-2-151 and 20-2-281 and students with identified academic performance below grade levels defined by the Office of Student Achievement in Code Section 20-14-31 for any criterion-referenced assessment administered in accordance with Code Section 20-2-281 for grades one through five. Local school systems shall devise a process for the identification of such students at the beginning of each school year and also during the school year as a continuous process of early identification and monitoring. School systems may use indicators such as but not limited to the student's scores on previous assessments, the student's classroom performance in the same or previous years, and other reliable indicators to identify such students. A student shall be assigned to the early intervention program as soon as is practicable after the student is identified as at risk or after the results of the first-grade readiness assessment, the criterion-referenced assessment, or other indicators are known. The school shall provide timely notice and an opportunity for a conference with the student and his or her parents or guardians to discuss the student's academic performance and the role of the early intervention program.

(c) The State Board of Education shall describe by rules and regulations such additional services, resources, support, or strategies as may be provided by the local school system. The specifications for delivery of early intervention services shall be the responsibility of local boards of education except that the program rules and regulations adopted by the State Board of Education shall be followed in designing the program delivery models. Delivery models may include, but are not limited to, class augmentation, pull-out or self-contained classes, and the Reading Recovery Program delivered by certificated personnel.

(d) The early intervention program shall be designed with the intent of helping the student to perform at expectations and exit the program in the shortest possible time. Students shall be moved into this program, provided assistance, and moved out of this program upon reaching grade level performance. It is not the intent of the General Assembly that students be assigned to this program on a continuing or permanent basis.

(e) Funding for the early intervention program shall have a full-time equivalent teacher-student ratio of one teacher to 11 students.

(f) Each local school system shall annually report the number of students served in the early intervention program as part of the full-time equivalent program count conducted pursuant to Code Section 20-2-160. (Code 1981, § 20-2-153, enacted by Ga. L. 1985, p. 1657, § 1;

Ga. L. 1987, p. 1169, § 1; Ga. L. 1995, p. 1302, §§ 13, 17; Ga. L. 2000, p. 618, § 15; Ga. L. 2000, p. 1159, § 1; Ga. L. 2001, p. 148, § 1; Ga. L. 2004, p. 107, § 3.)

**Code Commission notes.** — The amendment of this Code section by Ga. L. 2000, p. 618, § 15, irreconcilably conflicted with and was treated as superseded by Ga. L. 2000, p. 1159, § 1. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

Pursuant to Code Section 28-9-5, in 2001, “Code Sections” was substituted for “Code Section” in the first sentence of subsection (b).

**Law reviews.** — For article, “Education Law,” see 53 *Mercer L. Rev.* 281 (2001).

## RESEARCH REFERENCES

**ALR.** — Construction of “stay-put” provision of Education of the Handicapped Act (20 USCS § 1415(e)(3)), that handicapped child shall remain in current educational placement pending proceedings conducted under section, 103 ALR Fed. 120.

Who is prevailing party for purposes of obtaining attorney’s fees under § 615(i)(3)(B) of Individuals with Disabilities Education Act (IDEA) (20 USCA § 1415(i)(3)(B)), 153 ALR Fed. 1.

What constitutes services that must be provided by federally assisted schools under the Individuals with Disabilities Education Act (IDEA) (20 USCA § 1400 et seq.), 161 ALR Fed. 1.

What constitutes reasonable accommodation under federal statutes protecting rights of disabled individual, regarding educational program or school rules as applied to learning disabled student, 166 ALR Fed. 503.

## 20-2-154. Remedial education program.

(a) All children and youth who are eligible for a general and career education program under Code Section 20-2-151 and who are also eligible under the criteria specified in this Code section shall be provided, in accordance with policies adopted by the State Board of Education, the remedial education program services needed to address their respective reading, mathematics, or writing deficiencies. The following students shall be eligible for remedial education services:

(1) Students in grades six through 12 may be eligible for services if they meet two or more of the following criteria:

(A) The student has been through the formal student support team process and has documented evidence to support the placement in remedial education;

(B) The student has been retained in the grade;

(C) The student is receiving services under Part A of Chapter 1 of Title 1 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America’s Schools Act of 1994 (Public Law 103-382);

(D) The student has been recommended by the teacher who has documented any of the following student information:

- (i) Low performance in the reading series system;
- (ii) Low performance in the mathematics series; or
- (iii) The student is unable to verbally express ideas and cannot write or dictate a meaningful sentence; or

(E) Current test information in the student file indicates the student has a score at or below the twenty-fifth percentile; and

(2) Students in grades six through 12 who are receiving services under the special education program as authorized by Code Section 20-2-152 and whose Individualized Education Programs (IEP's) specify that they meet the eligibility requirements specified in paragraph (1) of this subsection and that their special education program is not designed to address their respective reading, mathematics, or writing deficiencies.

No more than 25 percent of the full-time equivalent population in eligible grades as specified in paragraphs (1) and (2) of this subsection shall be eligible for the remedial program; provided, however, that the State Board of Education may develop regulations whereby a higher percentage may be eligible if the percentage of students receiving free and reduced price lunches exceeds 50 percent.

(b) Each local unit of administration shall submit to the State Board of Education by July 1 of each year the average achievement scores by subject area and grade level of all students who were receiving instructional services under the provisions of this Code section, except those students whose Individualized Education Programs under the special education program state they shall not be administered such achievement tests. If appropriate evaluation data are not received from a local school system by the state board by July 1 of each year, after a hearing has been held for the system, the subsequent allocation of funds under this Code section for the next fiscal year shall be withheld in accordance with the procedure specified in Code Section 20-2-243. The state board shall monitor each local school system's remedial education program at least once each year. The state board shall annually request sufficient state funds to pay a pro rata share of the costs associated with the staff of the federal compensatory education program for disadvantaged children when such staff is used to evaluate the remedial education program under this Code section in conjunction with the evaluation of the federal compensatory education program for disadvantaged children in the same local school system. (Code 1981, § 20-2-154, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1988, p. 612, § 6; Ga. L. 1991, p. 1630, § 1.1; Ga. L. 2000, p. 618, § 16; Ga. L. 2001, p. 148, § 2; Ga. L. 2006, p. 743, § 1/SB 515.)



**Editor's notes.** — Ga. L. 2000, p. 618, may be cited as the 'A Plus Education § 1, not codified by the General Assembly, Reform Act of 2000.' provides: "This Act shall be known and

### **20-2-154.1. Alternative education programs; intent; description; funding.**

(a) It is the policy of this state that the alternative education program shall provide a learning environment that includes the objectives of the quality core curriculum and that the instruction in an alternative education program shall enable students to return to a general or career education program as quickly as possible. Course credit shall be earned in an alternative education program in the same manner as in other education programs. It is the policy of this state that it is preferable to reassign disruptive students to an alternative education program rather than suspending or expelling such students from school.

(b) Alternative education programs are intended to meet the education needs of a student who is suspended from his or her regular classroom and also of a student who is eligible to remain in his or her regular classroom but is more likely to succeed in a nontraditional setting such as that provided in an alternative education program.

(c) As part of the process of assigning a student to an alternative education program for academic or nondisciplinary reasons, the school shall assess, through policies and procedures promulgated by the local board of education, the needs of the student and consider options for addressing those needs.

(d) Each local school system shall provide an alternative education program that:

(1) Is provided in a setting other than a student's regular classroom;

(2) Is located on or off of a regular school campus and may include in-school suspension that provides continued progress on regular classroom assignments;

(3) Provides for disruptive students who are assigned to the alternative education program to be separated from nondisruptive students who are assigned to the program;

(4) Focuses on English language arts, mathematics, science, social studies, and self-discipline;

(5) Provides for students' educational and behavioral needs; and

(6) Provides supervision and counseling.

(e) An alternative education program may provide for a student's transfer to a different campus, a school-community guidance center, or a community based alternative school.

(f) A local school system may provide an alternative education program jointly with one or more other systems.

(g) Each local school system shall cooperate with government agencies and community organizations that provide services in the school district to students placed in an alternative education program.

(h) For the 2000-2001 and 2001-2002 school years, state funding of alternative education programs shall be based upon a full-time equivalent program count that equals 2.5 percent of the sum of the full-time equivalent program count of the middle grades program, the middle school program as defined in Code Section 20-2-290, the high school general education program (grades nine through 12), and the vocational laboratory program (grades nine through 12). For the 2002-2003 school year and thereafter, the amount of state funds appropriated and allocated for the alternative education program provided for in this Code section shall be based on the actual count of students served during the preceding year, except that the count of students served shall not exceed 2.5 percent of the sum of the full-time equivalent program count of the middle grades program, the middle school program as defined in Code Section 20-2-290, the high school general education program (grades nine through 12), and the vocational laboratory program (grades nine through 12). Funds earned may be expended in kindergarten and in grades one through 12.

(i) A local school system shall allocate to an alternative education program the same expenditure for each student attending the alternative education program, including federal, state, and local funds, that would be allocated to the student's school if the student were attending the student's regularly assigned education program, including a special education program, except as otherwise provided in this Code section.

(j) Upon the request of a local school system, a regional educational service agency may provide to the system information on developing an alternative education program that takes into consideration the system's size, wealth, and existing facilities in determining the program best suited to the system.

(k) If a student placed in an alternative education program enrolls in another local school system before the expiration of the period of placement, the local board of education requiring the placement shall provide to the local school system in which the student enrolls, at the same time other records of the student are provided, a copy of the placement order. The local school system in which the student enrolls may continue the alternative education program placement under the

terms of the order or may allow the student to attend regular classes without completing the period of placement.

(1) The State Board of Education shall adopt rules necessary to administer the provisions of this Code section. Academically, the mission of alternative education programs shall be to enable students to perform at grade level. Annually, the Office of Student Achievement shall define for alternative education programs acceptable performance and performance indicating a need for peer review, based principally on standards defined by the Office of Student Achievement that measure the academic progress of students toward performing at grade level while attending an alternative education program. (Code 1981, § 20-2-154.1, enacted by Ga. L. 2000, p. 618, § 17; Ga. L. 2001, p. 148, § 3; Ga. L. 2004, p. 107, § 22; Ga. L. 2009, p. 8, § 20/SB 46.)

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

## **20-2-155. School climate management program; model codes of behavior and discipline.**

The State Board of Education shall establish a state-wide school climate management program to help local schools and systems requesting assistance in developing school climate improvement and management processes. Such projects will be designed to optimize local resources through voluntary community, student, teacher, administrator, and other school personnel participation. These processes will be designed for, but will not be limited to, promoting positive gains in student achievement scores, student and teacher morale, community support, and student and teacher attendance, while decreasing student suspensions, expulsions, dropouts, and other negative aspects of the total school environment. The state board upon request of a local school system is authorized to provide the necessary on-site technical assistance to local schools and systems and to offer other assistance through regional and state-wide conferences and workshops, printed material, and such other assistance as may be deemed appropriate under this Code section. The state board shall, upon request of a local school system, produce model codes of behavior and discipline and shall produce guidelines for application and administration of such codes. The results of this program shall be annually presented to the General Assembly for review in determining future appropriations for state-level technical assistance necessary to perform the duties assigned to the state board under this Code section. (Code 1981, § 20-2-155, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 2000, p. 618, § 18.)



**Editor's notes.** — Ga. L. 2000, p. 618, may be cited as the 'A Plus Education § 1, not codified by the General Assembly, Reform Act of 2000.' provides: "This Act shall be known and

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 314 et seq., 321. **C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 1082 et seq., 1121, 1122.

### 20-2-156. Program for limited-English-proficient students.

The State Board of Education shall create a program for limited-English-proficient students whose native language is not English, subject to appropriation by the General Assembly. The purpose of this program is to assist such students to develop proficiency in the English language, including listening, speaking, reading, and writing, sufficient to perform effectively at the currently assigned grade level. The state board shall prescribe such rules and regulations regarding eligibility criteria and standards as may be needed to carry out the provisions of this Code section. This program may also be referred to as the English for speakers of other languages (ESOL) program. (Code 1981, § 20-2-156, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 2000, p. 618, § 19.)

**Cross references.** — English designated as official language; constitutional rights not denied; authorization for documents and forms in other languages; exceptions, § 50-3-100.

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

### 20-2-157. Uniform reporting system for certain purposes; academic eligibility requirements to receive HOPE scholarship.

(a) It is the intent of the General Assembly to establish a uniform reporting system to be used as one of the criteria to determine eligibility of students seeking educational scholarships, grants, or loan assistance administered by the Georgia Student Finance Commission pursuant to Article 7 of Chapter 3 of this title.

(b) Each school system and private school shall adopt the reporting system described in this subsection for purposes of identifying and qualifying graduating seniors for the HOPE scholarship program and other programs identified in this Code section:

(1) Each school system and private school shall transmit, in a manner and at times prescribed by the Georgia Student Finance Commission, an electronic transcript of courses and course grades for each graduating senior that reflects the complete high school aca-

demic record of the student, including scores on any state tests required for graduation, the grading scales used by the school system or private school for the time periods referenced by the transcripts, and any other pertinent information as determined by the Georgia Student Finance Commission. Each grade reported by a school system or private school to the commission for the purpose of calculating the grade point average for HOPE scholarship eligibility shall be the actual grade earned by the student, with no weighting or addition of points by the local school system or private school;

(2) The Georgia Student Finance Commission shall calculate a grade point average for the purpose of determining eligibility for the HOPE scholarship from these electronic transcripts and shall notify students of their eligibility and high schools as to the eligibility of students;

(3) For students otherwise qualified and enrolling as freshmen students in eligible public or private postsecondary institutions for the first time on May 1, 2007, or thereafter, except as otherwise provided in paragraph (3.1) of this subsection, the Georgia Student Finance Commission shall calculate grade point averages for determining eligibility for the HOPE scholarship and other scholarships referenced in this Code section as follows:

(A) For students receiving a college preparatory diploma, each grade for a student in attempted coursework in English, mathematics, science, social studies, and foreign language that would, if successfully completed, satisfy a core graduation requirement for the college preparatory curriculum shall be equated to a grade on a 4.0 scale, such that a grade of "A" = 4.0, a grade of "B" = 3.0, a grade of "C" = 2.0, a grade of "D" = 1.0, and a grade of "F" = 0; or

(B) For students receiving a career/technical diploma, each grade for a student in attempted coursework in English, mathematics, science, and social studies that would, if successfully completed, satisfy a core graduation requirement for the career/technical curriculum shall be equated to a grade on a 4.0 scale, such that a grade of "A" = 4.0, a grade of "B" = 3.0, a grade of "C" = 2.0, a grade of "D" = 1.0, and a grade of "F" = 0.

Grades for coursework that is classified as advanced placement or international baccalaureate shall be weighted by the Georgia Student Finance Commission in calculating the overall grade point averages for students, provided that the weighting of such course grades is uniformly applied to all students in the state taking the specified coursework. The sum of the equated grades shall be divided by the number of course grades, adjusted for term length, to yield a grade point average on a 4.0 scale;

(3.1) For students otherwise qualified and enrolling in the ninth grade for the first time during the 2008-2009 school year and thereafter, the Georgia Student Finance Commission shall calculate grade point averages for determining eligibility for the HOPE scholarship and other scholarships referenced in this Code section by equating each grade for a student in attempted coursework in English, mathematics, science, social studies, and foreign language during the student's ninth, tenth, eleventh, or twelfth grade year to a grade on a 4.0 scale, such that a grade of "A" = 4.0, a grade of "B" = 3.0, a grade of "C" = 2.0, a grade of "D" = 1.0, and a grade of "F" = 0. Grades for coursework that is classified as advanced placement or international baccalaureate shall be weighted by the Georgia Student Finance Commission in calculating the overall grade point averages for students, provided that the weighting of such course grades is uniformly applied to all students in the state taking the specified coursework. The sum of the equated grades shall be divided by the number of course grades, adjusted for term length, to yield a grade point average on a 4.0 scale; and

(4) Qualification for the HOPE scholarship shall be determined from the grade point average calculated either as set out in paragraph (3) of this subsection or as set out in paragraph (3.1) of this subsection for students enrolling in the ninth grade for the first time in a Georgia public school during the 2008-2009 school year and thereafter. Beginning May 1, 2007, students with grade point averages equal to or in excess of 3.0 on the 4.0 scale with a college preparatory diploma shall meet achievement standards for the HOPE scholarship; students receiving a career/technical diploma shall meet achievement standards for the HOPE scholarship with a grade point average equal to or in excess of 3.2 on a 4.0 scale. For students enrolling in the ninth grade for the first time in a Georgia public school during the 2008-2009 school year and thereafter, such students with grade point averages equal to or in excess of 3.0 on a 4.0 scale shall meet achievement standards for the HOPE scholarship. This paragraph shall apply regardless of when a student graduated from high school and regardless of such student's eligibility status prior to May 1, 2007.

(c)(1) Beginning with the school year beginning after May 1, 2011, each school system and private school shall adopt the reporting system described in this subsection for purposes of determining potential eligibility for freshman, sophomore, and junior high school students for the HOPE scholarship program and other programs identified in this Code section.

(2) Each school system and private school shall transmit to the Georgia Student Finance Commission, in such manner and at such



times as the commission may prescribe, an electronic transcript of courses and course grades for each freshman, sophomore, and junior high school student that reflects the complete high school academic record of the student, including scores on any state tests required for graduation, the grading scales used by the school system or private school for the time periods referenced by the transcripts, and any other pertinent information as determined by the Georgia Student Finance Commission. Each grade reported by a school system or private school to the commission for the purpose of calculating the grade point average for potential HOPE scholarship eligibility shall be the actual grade earned by the student with no weighting or addition of points by the school system or private school.

(3) The Georgia Student Finance Commission shall calculate a grade point average for the purpose of determining eligibility for the HOPE scholarship from these electronic transcripts and shall notify students of their potential eligibility and high schools as to the potential eligibility of students.

(d) Beginning with students graduating from high school on or after May 1, 2015, in order to be eligible to receive a HOPE scholarship, a student shall receive credit in at least two courses prior to graduating from high school from the following categories:

(1) Advanced math, such as Advanced Algebra and Trigonometry, Math III, or an equivalent or higher course;

(2) Advanced science, such as Chemistry, Physics, Biology II, or an equivalent or higher course;

(3) Advanced placement courses in core subjects;

(4) International baccalaureate courses in core subjects;

(5) Courses taken at a unit of the University System of Georgia in core subjects where such courses are not remedial and developmental courses, as defined in Code Section 20-3-519; or

(6) Advanced foreign language courses.

Students may take one or more courses in each category; provided, however, that a course may only be counted one time. The Georgia Student Finance Commission shall be authorized to promulgate rules and regulations necessary to carry out the intent of this subsection.

(e) Beginning with students graduating from high school on or after May 1, 2016, in order to be eligible to receive a HOPE scholarship, a student shall receive credit in at least three courses prior to graduating from high school from the following categories:

(1) Advanced math, such as Advanced Algebra and Trigonometry, Math III, or an equivalent or higher course;

(2) Advanced science, such as Chemistry, Physics, Biology II, or an equivalent or higher course;

(3) Advanced placement courses in core subjects;

(4) International baccalaureate in core courses;

(5) Courses taken at a unit of the University System of Georgia in core subjects where such courses are not remedial and developmental courses, as defined in Code Section 20-3-519; or

(6) Advanced foreign language courses.

Students may take one or more courses in each category; provided, however, that a course may only be counted one time. The Georgia Student Finance Commission shall be authorized to promulgate rules and regulations necessary to carry out the intent of this subsection.

(f) Beginning with students graduating from high school on or after May 1, 2017, in order to be eligible to receive a HOPE scholarship, a student shall receive credit in at least four courses prior to graduating from high school from the following categories:

(1) Advanced math, such as Advanced Algebra and Trigonometry, Math III, or an equivalent or higher course;

(2) Advanced science, such as Chemistry, Physics, Biology II, or an equivalent or higher course;

(3) Advanced placement courses in core subjects;

(4) International baccalaureate in core courses;

(5) Courses taken at a unit of the University System of Georgia in core subjects where such courses are not remedial and developmental courses, as defined in Code Section 20-3-519; or

(6) Advanced foreign language courses.

Students may take one or more courses in each category; provided, however, that a course may only be counted one time. The Georgia Student Finance Commission shall be authorized to promulgate rules and regulations necessary to carry out the intent of this subsection. (Code 1981, § 20-2-157, enacted by Ga. L. 1994, p. 1057, § 1; Ga. L. 1998, p. 626, § 1; Ga. L. 2004, p. 922, § 1; Ga. L. 2009, p. 115, § 1/HB 313; Ga. L. 2010, p. 397, § 1/SB 340; Ga. L. 2011, p. 1, § 13/HB 326; Ga. L. 2011, p. 635, § 4/HB 186.)

**The 2010 amendment**, effective July 1, 2010, added subsection (c).

**The 2011 amendments.** — The first 2011 amendment, effective March 15, 2011, added subsections (d) through (f). See editor's note for applicability. The

second 2011 amendment, effective May 13, 2011, deleted "enrollment in postsecondary courses pursuant to Code Section 20-2-161.1 or seeking" following "eligibility of students seeking" in subsection (a).

**Editor's notes.** — Ga. L. 1998, p. 626,

§ 3, not codified by the General Assembly, provides that: "All rules and regulations previously adopted by the Georgia Student Finance Commission which pertain to HOPE grants, HOPE scholarships, HOPE GED vouchers, HOPE teacher's scholarships, and PROMISE teacher's scholarships are hereby ratified to the extent not inconsistent with this Act."

Ga. L. 1998, p. 626, § 4, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 1998, and shall apply to scholarships and grants for the academic year beginning with the fall quarter or semester of 1998."

Ga. L. 2011, p. 1, § 17/HB 326, not codified by the General Assembly, provides, in part, that the 2011 amendment shall be applicable to postsecondary students beginning in the fall of 2011.

Ga. L. 2011, p. 635, § 1/HB 186, not codified by the General Assembly, provides: "The General Assembly finds that:

"(1) Our state's long-term prosperity depends on supporting an education system that is designed to prepare our students for a global economy;

"(2) High school students and parents must understand that they have options for career pathway programs of study that join a college-ready academic core with quality career, technical, and agricultural education studies that result in a high school diploma and preparation for success in advanced training, an associate's degree, a baccalaureate degree, and a career;

"(3) Local school systems must provide every student with choices that are academically rigorous and aligned to opportunities in high-demand, high-skill, high-wage career fields and to postsecondary career and technical pathways leading to advanced credentials or degrees;

"(4) The State Board of Education, the Board of Regents of the University System of Georgia, and the Board of Technical and Adult Education must work together so that academic courses that are embedded

within career, technical, and agricultural education courses (CTAE) are given appropriate academic credit at the high school level and recognized at the postsecondary level;

"(5) Teachers should be provided with professional development opportunities that enforce the academically rigorous standards in relevant, project based coursework;

"(6) High school students should clearly understand the options for dual high school and postsecondary credit, and the state should properly fund these options;

"(7) Every state education agency, postsecondary institution, and local school system should provide all high school students with opportunities for accelerated learning through dual credit coursework leading to at least six postsecondary credits and have as a collective goal to graduate every student with postsecondary credit;

"(8) Georgia's strategic industries must be partners in our public education system (secondary and postsecondary) so that they are assured that our high school graduates are prepared for success in the workforce;

"(9) Georgia's public education system must incorporate many different types of assessments and certificates into their programs so that a student's skill level is assessed and that it also has meaning to them for postsecondary and career success; and

"(10) Georgia's students must understand that a high school diploma and some form of postsecondary credential are key to success in the workforce and earning a family living wage."

**Law reviews.** — For article on the 2004 amendment of this Code section, see 21 Ga. St. U. L. Rev. 107 (2004). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 115 (2011). For article, "Education: Postsecondary Education," see 28 Ga. St. U. L. Rev. 193 (2011).

## 20-2-158. Contracts for school psychology services.

A local unit of administration shall be authorized to contract for school psychology services with an individual certified by the Profes-



sional Standards Commission in school psychology. The certified individual shall be authorized to practice school psychology for the local unit of administration notwithstanding any contrary provision contained in Chapter 39 of Title 43 which requires such individual to be licensed thereunder. (Code 1981, § 20-2-158, enacted by Ga. L. 1994, p. 668, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1994, this Code section, originally designated as Code Section 20-2-157 by Ga. L. 1994, p. 668, § 1, was redesignated as Code Section 20-2-158 in view of the fact that Ga. L. 1994, p. 1057, § 1, had already enacted a Code Section 20-2-157.

### **20-2-159. Requirements for receiving special education and related services of students enrolled in home study programs.**

For the purposes of the Individuals with Disabilities Education Act, 20 U.S.C.A. Section 1400, et seq., students enrolled in home study programs meeting the requirements of Code Section 20-2-690 shall be deemed to be private school students and shall be provided with the same special education and related services as students enrolled in private schools. (Code 1981, § 20-2-159, enacted by Ga. L. 2002, p. 798, § 1.)

#### **20-2-159.1. Focused programs of study.**

No later than July 1, 2013, the Department of Education shall develop, and the State Board of Education shall approve, state models and curriculum framework for the following focused programs of study, as defined in Code Section 20-2-326, including, but not limited to:

- (1) Agriculture, food, and natural resources;
- (2) Architecture and construction;
- (3) Arts, audio-video technology, and communications;
- (4) Business, management, and administration;
- (5) Education and training;
- (6) Finance;
- (7) Health science;
- (8) Hospitality and tourism;
- (9) Human services;
- (10) Information technology;
- (11) Law, public safety, and security;

- (12) Manufacturing;
- (13) Government and public administration;
- (14) Marketing, sales, and service;
- (15) Science, technology, engineering, and mathematics; and
- (16) Transportation, distribution, and logistics.

Such focused programs of study may be combined around these and other related clusters. (Code 1981, § 20-2-159.1, enacted by Ga. L. 2011, p. 635, § 5/HB 186; Ga. L. 2012, p. 689, § 3/HB 713.)

**Effective date.** — This Code section became effective May 13, 2011.

**The 2012 amendment,** effective July 1, 2012, substituted “2013” for “2012” in the introductory paragraph.

**Editor’s notes.** — Ga. L. 2011, p. 635, § 1/HB 186, not codified by the General Assembly, provides: “The General Assembly finds that:

“(1) Our state’s long-term prosperity depends on supporting an education system that is designed to prepare our students for a global economy;

“(2) High school students and parents must understand that they have options for career pathway programs of study that join a college-ready academic core with quality career, technical, and agricultural education studies that result in a high school diploma and preparation for success in advanced training, an associate’s degree, a baccalaureate degree, and a career;

“(3) Local school systems must provide every student with choices that are academically rigorous and aligned to opportunities in high-demand, high-skill, high-wage career fields and to postsecondary career and technical pathways leading to advanced credentials or degrees;

“(4) The State Board of Education, the Board of Regents of the University System of Georgia, and the Board of Technical and Adult Education must work together so that academic courses that are embedded within career, technical, and agricultural education courses (CTAE) are given appropriate academic credit at the high school level and recognized at the postsecondary level;

“(5) Teachers should be provided with professional development opportunities that enforce the academically rigorous standards in relevant, project based coursework;

“(6) High school students should clearly understand the options for dual high school and postsecondary credit, and the state should properly fund these options;

“(7) Every state education agency, postsecondary institution, and local school system should provide all high school students with opportunities for accelerated learning through dual credit coursework leading to at least six postsecondary credits and have as a collective goal to graduate every student with postsecondary credit;

“(8) Georgia’s strategic industries must be partners in our public education system (secondary and postsecondary) so that they are assured that our high school graduates are prepared for success in the workforce;

“(9) Georgia’s public education system must incorporate many different types of assessments and certificates into their programs so that a student’s skill level is assessed and that it also has meaning to them for postsecondary and career success; and

“(10) Georgia’s students must understand that a high school diploma and some form of postsecondary credential are key to success in the workforce and earning a family living wage.”

**Law reviews.** — For article on the 2011 enactment of this Code section, see 28 Ga. St. U. L. Rev. 115 (2011).

**20-2-159.2. Coordination between high schools and postsecondary institutions to minimize the need for remedial course work for students in postsecondary institutions.**

Stronger coordination between high schools and institutions of higher education is necessary to prepare students for more challenging postsecondary endeavors and to lessen the need for academic remediation in college, thereby reducing the costs of higher education for students, families, and the state. To this end, the State Board of Education, the Board of Regents of the University System of Georgia, and the State Board of the Technical College System of Georgia shall:

(1) Develop policies to ensure that students who complete the core curriculum established pursuant to Code Section 20-2-140 will meet the requirements for purposes of admission into a postsecondary institution, such as grade point average and readiness levels in reading, writing, and mathematics, without having to take remedial coursework. Such policies shall:

(A) Establish the benchmarks for college readiness and the method in which students can demonstrate readiness in reading, writing, and mathematics for postsecondary coursework upon completing the core curriculum; and

(B) Set the conditions for ensuring college readiness;

(2) Define college-readiness standards in reading, writing, and mathematics needed for success in advanced training, certificate programs, and programs leading to an associate's or bachelor's degree;

(3) Identify one or more state-wide common assessments to determine postsecondary readiness in reading, writing, and mathematics and inform students of their performance on such assessments no later than the end of tenth grade;

(4) Develop transitional courses in reading, writing, and mathematics, with common standards, syllabus, and instruction materials for eleventh and twelfth grade students who fail to meet readiness standards, which courses shall be required by the state board to be offered by all local boards of education and which all students who are identified pursuant to paragraph (3) of this subsection as failing to meet readiness standards shall be required to take;

(5) Establish a state-wide process for determining how successful completion of transitional courses will guarantee that students will meet readiness standards; and



(6) Ensure dual credit courses reflect postsecondary coursework. (Code 1981, § 20-2-159.2, enacted by Ga. L. 2011, p. 635, § 5/HB 186; Ga. L. 2012, p. 689, § 4/HB 713.)

**Effective date.** — This Code section became effective May 13, 2011.

**The 2012 amendment,** effective July 1, 2012, in paragraph (4), inserted a comma, added “, which courses shall be required by the state board to be offered by all local boards of education and which all students who are identified pursuant to paragraph (3) of this subsection as failing to meet readiness standards shall be required to take” and deleted “and” at the end; added paragraph (5); and redesignated former paragraph (5) as present paragraph (6).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2011, “State Board of the Technical College System of Georgia” was substituted for “Board of Technical and Adult Education” in the introductory paragraph.

**Editor’s notes.** — Ga. L. 2011, p. 635, § 1/HB 186, not codified by the General Assembly, provides: “The General Assembly finds that:

“(1) Our state’s long-term prosperity depends on supporting an education system that is designed to prepare our students for a global economy;

“(2) High school students and parents must understand that they have options for career pathway programs of study that join a college-ready academic core with quality career, technical, and agricultural education studies that result in a high school diploma and preparation for success in advanced training, an associate’s degree, a baccalaureate degree, and a career;

“(3) Local school systems must provide every student with choices that are academically rigorous and aligned to opportunities in high-demand, high-skill, high-wage career fields and to postsecondary career and technical pathways leading to advanced credentials or degrees;

“(4) The State Board of Education, the Board of Regents of the University System

of Georgia, and the Board of Technical and Adult Education must work together so that academic courses that are embedded within career, technical, and agricultural education courses (CTAE) are given appropriate academic credit at the high school level and recognized at the postsecondary level;

“(5) Teachers should be provided with professional development opportunities that enforce the academically rigorous standards in relevant, project based coursework;

“(6) High school students should clearly understand the options for dual high school and postsecondary credit, and the state should properly fund these options;

“(7) Every state education agency, postsecondary institution, and local school system should provide all high school students with opportunities for accelerated learning through dual credit coursework leading to at least six postsecondary credits and have as a collective goal to graduate every student with postsecondary credit;

“(8) Georgia’s strategic industries must be partners in our public education system (secondary and postsecondary) so that they are assured that our high school graduates are prepared for success in the workforce;

“(9) Georgia’s public education system must incorporate many different types of assessments and certificates into their programs so that a student’s skill level is assessed and that it also has meaning to them for postsecondary and career success; and

“(10) Georgia’s students must understand that a high school diploma and some form of postsecondary credential are key to success in the workforce and earning a family living wage.”

**Law reviews.** — For article on the 2011 enactment of this Code section, see 28 Ga. St. U. L. Rev. 115 (2011).

**20-2-159.3. Academic core standards to be embedded in career, technical, and agricultural education courses.**

(a) The competencies and curricula established for career, technical, and agricultural education courses pursuant to Code Section 20-2-140 shall include embedded standards in academic core subject areas, as appropriate. In establishing such competencies and curricula, the state board shall work to ensure that the coursework meets postsecondary requirements for acceptance of credit for such coursework at the postsecondary level. Such courses shall be taught by a highly qualified teacher in the academic content and trained or experienced in contextualized learning using project based methods; by a highly qualified career, technical, and agricultural education teacher who has completed a state-approved training program to strengthen academic content and has passed a state-approved exam for demonstrating mastery of academic content; or by a team made up of a highly qualified teacher in the academic content and a highly qualified career, technical, and agricultural education teacher working together to teach the course.

(b) Local school systems and individual charter schools may develop and implement career, technical, and agricultural courses with embedded standards in academic core subjects areas, including, but not limited to, English, language arts, science, social studies, and mathematics.

(c) For an academic core subject area for which an end-of-course assessment has been adopted pursuant to Code Section 20-2-281, students shall be given the opportunity to take such end-of-course assessment upon completion of the career, technical, and agricultural education course that includes embedded standards in such academic core subject area, unless such student has already passed such end-of-course assessment.

(d) Students who successfully complete a course in career, technical, and agricultural education that includes embedded standards in academic core subject areas, as adopted or approved by the state board, shall receive course credit for both the career, technical, and agricultural education course as well as for the academic core coursework embedded in such course.

(e) The guidelines shall limit the number of academic credits earned through career, technical, and agricultural education courses for any student to three credits and shall ensure acceptance of such credits for purposes of admission into a postsecondary institution. Further, such a credit shall count only once toward high school diploma requirements unless the course requires expanded time to cover the academic and career, technical, and agricultural education content found in both the

academic and the career, technical, and agricultural education course. (Code 1981, § 20-2-159.3, enacted by Ga. L. 2011, p. 635, § 5/HB 186.)

**Effective date.** — This Code section became effective May 13, 2011.

**Editor’s notes.** — Ga. L. 2011, p. 635, § 1/HB 186, not codified by the General Assembly, provides: “The General Assembly finds that:

“(1) Our state’s long-term prosperity depends on supporting an education system that is designed to prepare our students for a global economy;

“(2) High school students and parents must understand that they have options for career pathway programs of study that join a college-ready academic core with quality career, technical, and agricultural education studies that result in a high school diploma and preparation for success in advanced training, an associate’s degree, a baccalaureate degree, and a career;

“(3) Local school systems must provide every student with choices that are academically rigorous and aligned to opportunities in high-demand, high-skill, high-wage career fields and to postsecondary career and technical pathways leading to advanced credentials or degrees;

“(4) The State Board of Education, the Board of Regents of the University System of Georgia, and the Board of Technical and Adult Education must work together so that academic courses that are embedded within career, technical, and agricultural education courses (CTAE) are given appropriate academic credit at the high school level and recognized at the postsecondary level;

“(5) Teachers should be provided with

professional development opportunities that enforce the academically rigorous standards in relevant, project based coursework;

“(6) High school students should clearly understand the options for dual high school and postsecondary credit, and the state should properly fund these options;

“(7) Every state education agency, postsecondary institution, and local school system should provide all high school students with opportunities for accelerated learning through dual credit coursework leading to at least six postsecondary credits and have as a collective goal to graduate every student with postsecondary credit;

“(8) Georgia’s strategic industries must be partners in our public education system (secondary and postsecondary) so that they are assured that our high school graduates are prepared for success in the workforce;

“(9) Georgia’s public education system must incorporate many different types of assessments and certificates into their programs so that a student’s skill level is assessed and that it also has meaning to them for postsecondary and career success; and

“(10) Georgia’s students must understand that a high school diploma and some form of postsecondary credential are key to success in the workforce and earning a family living wage.”

**Law reviews.** — For article on the 2011 enactment of this Code section, see 28 Ga. St. U. L. Rev. 115 (2011).

## 20-2-159.4. Policies and guidelines for awarding units of high school credit based on demonstrated proficiency.

(a) The State Board of Education, in consultation with the Board of Regents of the University System of Georgia and the State Board of the Technical College System of Georgia, shall adopt policies and establish guidelines for awarding units of high school credit to students based on a demonstration of subject area competency, instead of or in combination with completion of courses of classroom instruction. Such policies and guidelines shall clearly delineate the manner in which students can



earn credit, how mastery of standards will be assessed, how locally developed assessments will be reviewed and approved, how such credit will be recorded on high school transcripts, and when outcomes as a result of these policies and guidelines will be reviewed. The state board shall adopt such policies and establish guidelines, and such policies and guidelines shall be applicable beginning with the 2013-2014 school year.

(b) Students may earn credits through:

- (1) The completion of courses; or
- (2) The testing out or otherwise demonstrating mastery of the course content.

(c) The state board shall identify assessments, including various commercial assessments, for immediate use for students to demonstrate subject area competency, which may include, but not be limited to:

- (1) Advanced placement exams;
- (2) ACT course assessment;
- (3) Industry-specific certificates and credentials for career, technical, and agricultural education courses;
- (4) College Level Examination Program (CLEP) exams; and
- (5) Nationally recognized foreign language performance assessments.

The state board shall establish a process for reviewing and approving performance based assessments developed commercially, by the state, or by a local school system. Initially, the state board shall limit the number of credits earned through such educational options to three credits per student until the practice is proven to yield student outcomes at least equivalent to those found in standard seat-time courses. The policy shall ensure that credit for demonstrated proficiency is reported on student transcripts in the same way that seat-time credit is recorded. The state board shall review such policy after three years to determine if student outcomes from these educational options are equivalent to, if not better than, student outcomes in traditional courses.

(d) Each local school system shall comply with the state board's plan adopted pursuant to this Code section and shall award units of high school credit in accordance with such plan. Local boards of education and charter schools shall establish implementation policies and shall be prohibited from setting policies that negate or otherwise prohibit access to such plan. (Code 1981, § 20-2-159.4, enacted by Ga. L. 2011, p. 635, § 5/HB 186; Ga. L. 2012, p. 689, § 5/HB 713.)

**Effective date.** — This Code section became effective May 13, 2011.

**The 2012 amendment,** effective July 1, 2012, substituted “2013-2014” for “2012-2013” in the last sentence of subsection (a).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2011, “State Board of the Technical College System of Georgia” was substituted for “Board of Technical and Adult Education” in the first sentence of subsection (a).

**Editor’s notes.** — Ga. L. 2011, p. 635, § 1/HB 186, not codified by the General Assembly, provides: “The General Assembly finds that:

“(1) Our state’s long-term prosperity depends on supporting an education system that is designed to prepare our students for a global economy;

“(2) High school students and parents must understand that they have options for career pathway programs of study that join a college-ready academic core with quality career, technical, and agricultural education studies that result in a high school diploma and preparation for success in advanced training, an associate’s degree, a baccalaureate degree, and a career;

“(3) Local school systems must provide every student with choices that are academically rigorous and aligned to opportunities in high-demand, high-skill, high-wage career fields and to postsecondary career and technical pathways leading to advanced credentials or degrees;

“(4) The State Board of Education, the Board of Regents of the University System of Georgia, and the Board of Technical and Adult Education must work together so that academic courses that are embedded within career, technical, and agricultural

education courses (CTAE) are given appropriate academic credit at the high school level and recognized at the postsecondary level;

“(5) Teachers should be provided with professional development opportunities that enforce the academically rigorous standards in relevant, project based coursework;

“(6) High school students should clearly understand the options for dual high school and postsecondary credit, and the state should properly fund these options;

“(7) Every state education agency, postsecondary institution, and local school system should provide all high school students with opportunities for accelerated learning through dual credit coursework leading to at least six postsecondary credits and have as a collective goal to graduate every student with postsecondary credit;

“(8) Georgia’s strategic industries must be partners in our public education system (secondary and postsecondary) so that they are assured that our high school graduates are prepared for success in the workforce;

“(9) Georgia’s public education system must incorporate many different types of assessments and certificates into their programs so that a student’s skill level is assessed and that it also has meaning to them for postsecondary and career success; and

“(10) Georgia’s students must understand that a high school diploma and some form of postsecondary credential are key to success in the workforce and earning a family living wage.”

**Law reviews.** — For article on the 2011 enactment of this Code section, see 28 Ga. St. U. L. Rev. 115 (2011).

## 20-2-159.5. Dual credit courses; requirements.

(a) For purposes of this Code section, the term:

(1) “Dual credit course” means any arrangement whereby an eligible student takes one or more courses, including virtual courses, at or through an eligible institution while still enrolled as a public high school student and receives credit both at the high school and at the eligible institution.

(2) "Eligible institution" means any eligible postsecondary institution as defined in paragraph (7) of Code Section 20-3-519.

(3) "Eligible student" means a student entering ninth through twelfth grades who attends a public high school in this state and takes at least two courses per day on campus.

(4) "Secondary credit" means high school credit for dual credit courses taken at an eligible institution.

(b) The department, the Board of Regents of the University System of Georgia, and the State Board of the Technical College System of Georgia shall jointly:

(1) Establish the conditions under which high school students may earn dual credit for coursework completed while in high school. Such conditions shall include demonstration by students as to college readiness in reading, writing, and mathematics required for advanced training leading to a certificate, an associate's degree, or a bachelor's degree in order to receive dual credit as set forth in this Code section. A student who meets reading and writing readiness standards shall qualify to enroll in any dual credit course except in courses that require a strong mathematics foundation. To qualify for such mathematics courses, students shall be required to meet mathematics readiness standards as set forth in this Code section. Students who fail to meet these conditions may enroll in such courses if they enroll concurrently in specially designed courses to address their deficits in reading and writing or mathematics or both and shall be awarded dual credit if they meet readiness standards before or at the point they successfully complete the dual credit course;

(2) Develop appropriate forms and counseling guidelines for dual credit courses and shall make such forms and guidelines available to local school systems and eligible institutions. No later than the first day of April each year, each local school system shall provide general information about dual credit courses, including such forms, to all its eighth through eleventh grade students. A local school system shall also provide counseling services in accordance with the counseling guidelines provided by the department to such students and their parents or guardians before the students enroll in a dual credit course. Prior to participating in a dual credit course, the student and the student's parent or guardian shall sign the form provided by the school system or by an eligible institution stating that they have received the counseling specified in this Code section and that they understand the responsibilities that shall be assumed in participating in the dual credit program; and

(3) Establish policies to ensure that dual credit courses reflect college-level work in order for such courses to yield dual credit, which shall include:



(A) Establishing college-readiness standards in reading, writing, and mathematics that students must meet to enroll in dual credit courses;

(B) Setting minimum eligibility requirements for earning college credit while in high school and for all state postsecondary institutions to apply to both academic and career, technical, and agricultural education dual credit courses;

(C) Establishing the same content standards, requirements for faculty, course syllabi, and end-of-course exams for dual credit academic and career, technical, and agricultural education courses, whether taught to high school or college students;

(D) Developing a state-wide system for the transfer of college credits earned through dual credit courses; and

(E) Determining how dual enrollment will be monitored to assure programs meet state standards for college-level work.

(c) Any eligible student may apply to an eligible institution to take one or more dual credit courses at or through that institution which are approved for secondary credit in accordance with the conditions established pursuant to subsection (d) of this Code section. If accepted at an eligible institution, such eligible student may take any such course at that institution, whether or not the course is taught during the regular public school day, and receive secondary credit therefor under the conditions provided in this Code section.

(d)(1) A local school system shall grant academic credit to an eligible student enrolled in a dual credit course in an eligible institution if that course has been approved by the State Board of Education or in a virtual course approved by the State Board of Education if such student successfully completes such course. The State Board of Education shall approve any such course which is substantially comparable to a state approved course. The secondary credit granted shall be for the comparable course approved by the State Board of Education. Upon completion of an eligible institution's approved course, the eligible student shall be responsible for requesting that the institution notify the student's local school system regarding his or her grade in that course.

(2) Secondary school credits granted for dual credit courses under paragraph (1) of this subsection shall be counted toward State Board of Education graduation requirements and subject area requirements of the local school system. Evidence of successful completion of each course and secondary credits granted shall be included in the eligible student's secondary school records.

(3) Following the grant of postsecondary credit for successful completion of any dual enrollment course, when a student enrolls in

an eligible institution after leaving secondary school, that eligible institution shall award postsecondary credit for any dual credit course successfully completed on the same basis on which such credits are customarily awarded. An eligible institution shall not charge a student for the award of such postsecondary credit.

(4) The department shall consult the Board of Regents of the University System of Georgia and the State Board of the Technical College System of Georgia in developing rules and regulations to be recommended to the State Board of Education for approval regarding the eligibility criteria for dual credit courses.

(e) The State Board of Education shall establish rules and regulations relating to applicable state and federal testing requirements for eligible students participating in dual credit courses.

(f) Any person who knowingly makes or furnishes any false statement or misrepresentation, or who accepts such statement or misrepresentation knowing it to be false, for the purpose of enabling an eligible institution to obtain wrongfully any payment under this Code section shall be guilty of a misdemeanor.

(g) Students enrolled in the Georgia Youth Apprenticeship Program under Code Section 20-2-161.2 shall be eligible to earn dual credit upon completing a planned training experience under guidelines developed by the State Board of Education and the State Board of the Technical College System of Georgia provided students meet postsecondary readiness established in reading and writing and mathematics for the particular advanced training program or associate's degree. (Code 1981, § 20-2-159.5, enacted by Ga. L. 2011, p. 635, § 5/HB 186.)

**Effective date.** — This Code section became effective May 13, 2011.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2011, "State Board of the Technical College System of Georgia" was substituted for "Board of Technical and Adult Education" in the introductory language of subsection (b) and in subsection (g); and "the Technical College System of Georgia" was substituted for "Technical and Adult Education" in paragraph (d)(4).

**Editor's notes.** — Ga. L. 2011, p. 635, § 1/HB 186, not codified by the General Assembly, provides: "The General Assembly finds that:

"(1) Our state's long-term prosperity depends on supporting an education system that is designed to prepare our students for a global economy;

"(2) High school students and parents

must understand that they have options for career pathway programs of study that join a college-ready academic core with quality career, technical, and agricultural education studies that result in a high school diploma and preparation for success in advanced training, an associate's degree, a baccalaureate degree, and a career;

"(3) Local school systems must provide every student with choices that are academically rigorous and aligned to opportunities in high-demand, high-skill, high-wage career fields and to postsecondary career and technical pathways leading to advanced credentials or degrees;

"(4) The State Board of Education, the Board of Regents of the University System of Georgia, and the Board of Technical and Adult Education must work together so that academic courses that are embedded

within career, technical, and agricultural education courses (CTAE) are given appropriate academic credit at the high school level and recognized at the postsecondary level;

“(5) Teachers should be provided with professional development opportunities that enforce the academically rigorous standards in relevant, project based coursework;

“(6) High school students should clearly understand the options for dual high school and postsecondary credit, and the state should properly fund these options;

“(7) Every state education agency, postsecondary institution, and local school system should provide all high school students with opportunities for accelerated learning through dual credit coursework leading to at least six postsecondary credits and have as a collective goal to gradu-

ate every student with postsecondary credit;

“(8) Georgia’s strategic industries must be partners in our public education system (secondary and postsecondary) so that they are assured that our high school graduates are prepared for success in the workforce;

“(9) Georgia’s public education system must incorporate many different types of assessments and certificates into their programs so that a student’s skill level is assessed and that it also has meaning to them for postsecondary and career success; and

“(10) Georgia’s students must understand that a high school diploma and some form of postsecondary credential are key to success in the workforce and earning a family living wage.”

**Law reviews.** — For article on the 2011 enactment of this Code section, see 28 Ga. St. U. L. Rev. 115 (2011).

## PART 4

### FINANCING

#### **20-2-160. Determination of enrollment by institutional program; determination of funds to be appropriated.**

(a) The State Board of Education shall designate the specific dates upon which two counts of students enrolled in each instructional program authorized under this article shall be made each school year and by which the counts shall be reported to the Department of Education. The initial enrollment count shall be made after October 1 but prior to November 17 and the final enrollment count after March 1 but prior to May 1. The report shall indicate the student’s specific assigned program for each one-sixth segment of the school day on the designated reporting date. No program shall be indicated for a student for any one-sixth segment of the school day that the student is assigned to a study hall; a noncredit course; a course recognized under this article or by state board policy as an enrichment course, except a driver education course; a course which requires participation in an extracurricular activity for which enrollment is on a competitive basis; a course in which the student serves as a student assistant to a teacher, in a school office, or in the media center, except when such placement is an approved work site of a recognized career or vocational program; an individual study course for which no outline of course objectives is prepared in writing prior to the beginning of the course; or any other course or activity so designated by the state board. For the purpose of



this Code section, the term “enrichment course” means a course which does not dedicate a major portion of the class time toward the development and enhancement of one or more student competencies as adopted by the state board under Code Section 20-2-140. A program shall not be indicated for a student for any one-sixth segment of the school day for which the student is not enrolled in an instructional program or has not attended a class or classes within the preceding ten days; nor shall a program be indicated for a student for any one-sixth segment of the school day for which the student is charged tuition or fees or is required to provide materials or equipment beyond those authorized pursuant to Code Section 20-2-133. A student who is enrolled in a dual credit course pursuant to Code Section 20-2-159.5 shall be counted for the high school program or other appropriate program for each segment in which the student is attending such dual credit course. The state board shall adopt such regulations and criteria as necessary to ensure objective and true counts of students in state approved instructional programs. The state board shall also establish criteria by which students shall be counted as resident or nonresident students, including specific circumstances which may include, but not be limited to, students attending another local school system under court order or under the terms of a contract between two local school systems. If a local school system has a justifiable reason, it may seek authority from the state board to shift full-time equivalent program counts from the designated date to a requested alternate date.

(b) The full-time equivalent (FTE) program count for each local school system shall be obtained in the following manner:

- (1) Count the number of one-sixth segments of the school day for which each student is enrolled in each program authorized under Code Section 20-2-161; and

- (2) Divide the total number of segments counted for each program by six. The result is the full-time equivalent program count for each respective state recognized program.

(c) For the purpose of initially determining the amount of funds to be appropriated to finance each respective program for the ensuing fiscal year, a projection of the second full-time equivalent program count shall be calculated as follows:

- (1) Divide the first total full-time equivalent count for the current fiscal year by the first total full-time equivalent count for the immediately preceding fiscal year;

- (2) Multiply the quotient obtained in paragraph (1) of this subsection by the second total full-time equivalent count for the immediately preceding fiscal year. The result shall be the projected second total full-time equivalent count for the current fiscal year;

(3) Divide the average of the local school system's two most recent full-time equivalent program counts by the average of the two most recent total full-time equivalent counts; and

(4) Multiply the quotient obtained in paragraph (3) of this subsection by the product obtained in paragraph (2) of this subsection. The result shall be the projected second full-time equivalent program count for the current fiscal year.

(d) The average of the first full-time equivalent program count, weighted two parts, and the projected second full-time equivalent program count, weighted one part, shall be used to initially determine the funds needed to finance the program for the ensuing fiscal year.

(e) For purposes of calculating allotments for a new or revised instructional program for which the full-time equivalent program counts provided for in subsections (a) through (d) of this Code section do not exist, the most recent full-time equivalent program count shall be used until such time as the full-time equivalent program counts provided for in subsections (a) through (d) of this Code section do exist.

(f) The allotments for the alternative education program shall be calculated as provided in subsection (h) of Code Section 20-2-154.1. (Code 1981, § 20-2-160, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1988, p. 1991, § 1; Ga. L. 1990, p. 1354, § 2; Ga. L. 1992, p. 462, § 1; Ga. L. 1992, p. 1335, § 1; Ga. L. 1993, p. 1693, § 1; Ga. L. 1996, p. 494, § 1; Ga. L. 2000, p. 618, § 20; Ga. L. 2001, p. 148, § 4; Ga. L. 2005, p. 795, § 1/SB 33; Ga. L. 2006, p. 743, § 2/SB 515; Ga. L. 2011, p. 635, § 6/HB 186; Ga. L. 2012, p. 893, § 2/SB 289.)

**The 2011 amendment**, effective May 13, 2011, substituted the present seventh sentence of subsection (a) for the former sentence, which read: "A student who is enrolled in an eligible institution under the program established in Code Section 20-2-161.1 may be counted for the high school program for only that portion of the day that the student is attending the high school for those segments that are eligible to be counted under this subsection."

**The 2012 amendment**, effective July 1, 2012, deleted "a course taken through the Georgia Virtual School pursuant to Code Section 20-2-319.1," preceding "or any other course or activity" near the end of the fourth sentence of subsection (a).

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

Ga. L. 2011, p. 635, § 1/HB 186, not codified by the General Assembly, provides: "The General Assembly finds that:

"(1) Our state's long-term prosperity depends on supporting an education system that is designed to prepare our students for a global economy;

"(2) High school students and parents must understand that they have options for career pathway programs of study that join a college-ready academic core with quality career, technical, and agricultural education studies that result in a high school diploma and preparation for success in advanced training, an associate's degree, a baccalaureate degree, and a career;

"(3) Local school systems must provide every student with choices that are academically rigorous and aligned to opportunities in high-demand, high-skill, high-wage career fields and to postsecond-

ary career and technical pathways leading to advanced credentials or degrees;

"(4) The State Board of Education, the Board of Regents of the University System of Georgia, and the Board of Technical and Adult Education must work together so that academic courses that are embedded within career, technical, and agricultural education courses (CTAE) are given appropriate academic credit at the high school level and recognized at the postsecondary level;

"(5) Teachers should be provided with professional development opportunities that enforce the academically rigorous standards in relevant, project based coursework;

"(6) High school students should clearly understand the options for dual high school and postsecondary credit, and the state should properly fund these options;

"(7) Every state education agency, postsecondary institution, and local school system should provide all high school students with opportunities for accelerated learning through dual credit coursework leading to at least six postsecondary cred-

its and have as a collective goal to graduate every student with postsecondary credit;

"(8) Georgia's strategic industries must be partners in our public education system (secondary and postsecondary) so that they are assured that our high school graduates are prepared for success in the workforce;

"(9) Georgia's public education system must incorporate many different types of assessments and certificates into their programs so that a student's skill level is assessed and that it also has meaning to them for postsecondary and career success; and

"(10) Georgia's students must understand that a high school diploma and some form of postsecondary credential are key to success in the workforce and earning a family living wage."

**Law reviews.** — For article on 2005 amendment of this Code section, see 22 Ga. St. U. L. Rev. 91 (2005). For article, "Education: Elementary and Secondary Education," see 28 Ga. St. U. L. Rev. 115 (2011).

## OPINIONS OF THE ATTORNEY GENERAL

**Funding enrichment courses.** — Local school systems may offer driver's education and other enrichment courses during regular school hours and may utilize state funds for the provision of these courses, so long as the requirements of the

Quality Basic Education Act are met, even though the enrichment courses will not count in the calculation of the amount of state funds which a local school system may receive. 1985 Op. Att'y Gen. No. 85-35.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 127, 128.

**ALR.** — Validity of public school funding systems, 110 ALR5th 293.

## 20-2-161. Quality Basic Education Formula.

(a) The high school general education program is declared to be the base program against which the cost of all other instructional programs shall be compared. The amount of funds needed by each full-time equivalent student in the base program, in order that such program can be sufficiently funded to provide quality basic education to all enrolled students, shall be known as the "base amount" and shall reflect program components which constitute the program weight for the high school general education program in Code Sections 20-2-182 through



20-2-186. However, the General Assembly shall annually establish through the General Appropriations Act the base amount to be used each year. In the event that the base amount so established when multiplied by the program weights in subsection (b) of this Code section requires funds in excess of the appropriation for the Quality Basic Education Formula grants, the funds which are appropriated for the Quality Basic Education Formula shall be prorated to each of the Quality Basic Education Formula cost categories.

(b) As the cost of instructional programs varies depending upon the teacher-student ratios and specific services typically required to address the special needs of students enrolled, state authorized instructional programs shall have the following program weights and teacher-student ratios:

|  |            |
|--|------------|
| (1) Kindergarten program.....  | 1.6587     |
|  | weight and |
|  | 1 to 15    |
|  | ratio      |
| (2) Kindergarten early intervention program.....                     | 2.0496     |
|  | weight and |
|  | 1 to 11    |
|  | ratio      |
| (3) Primary grades program (1-3).....                                | 1.2855     |
|  | weight and |
|  | 1 to 17    |
|  | ratio      |
| (4) Primary grades early intervention program (1-3).....             | 1.8029     |
|  | weight and |
|  | 1 to 11    |
|  | ratio      |
| (5) Upper elementary grades program (4-5).....                       | 1.0323     |
|  | weight and |
|  | 1 to 23    |
|  | ratio      |
| (6) Upper elementary grades early intervention<br>program (4-5)..... | 1.7971     |
|  | weight and |
|  | 1 to 11    |
|  | ratio      |
| (7) Middle grades program (6-8).....                                 | 1.0162     |
|  | weight and |
|  | 1 to 23    |
|  | ratio      |

|   |        |                                 |
|---|--------|---------------------------------|
| (8) Middle school program (6-8) as defined<br>in Code Section 20-2-290..... | 1.1213 | weight and<br>1 to 20<br>ratio  |
| (9) High school general education program (9-12).....                       | 1.0000 | weight and<br>1 to 23<br>ratio  |
| (10) Vocational laboratory program (9-12).....                              | 1.1847 | weight and<br>1 to 20<br>ratio  |
| (11) Program for persons with disabilities:<br>Category I.....              | 2.3940 | weight and<br>1 to 8<br>ratio   |
| (12) Program for persons with disabilities:<br>Category II.....             | 2.8156 | weight and<br>1 to 6.5<br>ratio |
| (13) Program for persons with disabilities:<br>Category III.....            | 3.5868 | weight and<br>1 to 5<br>ratio   |
| (14) Program for persons with disabilities:<br>Category IV.....             | 5.8176 | weight and<br>1 to 3<br>ratio   |
| (15) Program for persons with disabilities:<br>Category V.....              | 2.4583 | weight and<br>1 to 8<br>ratio   |
| (16) Program for intellectually gifted students:<br>Category VI.....        | 1.6673 | weight and<br>1 to 12<br>ratio  |

|   |            |
|---|------------|
| (17) Remedial education program.....                | 1.3128     |
|   | weight and |
|   | 1 to 15    |
|   | ratio      |
| (18) Alternative education program.....             | 1.6025     |
|   | weight and |
|   | 1 to 15    |
|   | ratio      |
| (19) English for speakers of other languages (ESOL) |            |
| program.....  | 2.5306     |
|   | weight and |
|   | 1 to 7     |
|   | ratio      |

(c) For purposes of calculating the annual allotment of funds to each local school system, the program weights may be carried to as many additional decimal places as needed and may be varied from the weights stated in subsection (b) of this Code section, consistent with cost-of-living adjustments granted by the General Assembly for salaried and nonsalaried components, by not more than 1 1/2 percent.

(d) The total funds needed for the Quality Basic Education Program for each local school system shall be calculated annually. Such total shall represent the product of the following calculations for each of the programs identified in subsection (b) of this Code section:

- (1) Multiply the average full-time equivalent program count pursuant to subsection (b) of Code Section 20-2-160 by the respective program weight established in subsection (b) of this Code section;
- (2) Multiply the product computed in paragraph (1) of this subsection by the base amount as established in the General Appropriations Act; and
- (3) Add the product computed in paragraph (2) of this subsection to the program adjustment amount for training and experience for the instructional program in accordance with subsection (e) of this Code section.

The process and associated components contained within this Code section shall be known as the “Quality Basic Education Formula.”

(e) The State Board of Education shall annually calculate for each instructional program provided for in subsection (b) of this Code section for each local school system the amount of additional funds needed beyond the amounts reflected in the base amount and the program weights, in order to pay the state minimum salaries pursuant to Code Section 20-2-212. The calculation of such additional amount shall be



based on all certificated professional personnel who were employed by the local school system as of the month of October for the most recent year that these data are available; provided, however, that the amount needed for training and experience for personnel funded through categorical grants shall only be included in the appropriate categorical grant. The amount shall be reported for each program identified in subsection (b) of this Code section for each full-time equivalent program count date and by segment of the school day and for each categorical program. Such additional amount shall be known as “program adjustment amount for training and experience” and this amount shall be noted in total in the language section of the General Appropriations Act each year.

(f) As the relative costs of the various program components will change over time and as some components will need to be added or removed, the Governor shall appoint a task force every three years for the purposes of reviewing the effectiveness of existing program weights and recommending to the General Assembly any changes needed. This task force shall be comprised of members or staff of the General Assembly, the State Board of Education, the Governor’s office, and representatives of local school systems. (Code 1981, § 20-2-161, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1990, p. 847, § 1; Ga. L. 1991, p. 1531, § 2; Ga. L. 1995, p. 701, § 2; Ga. L. 1995, p. 1302, § 15; Ga. L. 1996, p. 6, § 20; Ga. L. 1996, p. 494, § 2; Ga. L. 1996, p. 1422, § 2; Ga. L. 1998, p. 1520, § 2; Ga. L. 2000, p. 618, § 21; Ga. L. 2001, p. 148, § 5; Ga. L. 2005, p. 798, § 1/SB 35; Ga. L. 2008, p. 216, § 1/HB 1335.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1996, “persons with disabilities” was substituted for “the handicapped” in paragraphs (b)(8) through (b)(11) (now paragraphs (b)(11) through (b)(14)).

The amendment of this Code section by Ga. L. 1996, p. 494, § 2, irreconcilably conflicted with and was treated as superseded by Ga. L. 1996, p. 1422, § 2. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

**Editor’s notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

**Law reviews.** — For survey article on education law for the period from June 1, 2002 through May 31, 2003, see 55 *Mercer L. Rev.* 237 (2003).

## RESEARCH REFERENCES

**ALR.** — Special education requirements of gifted students, 115 *ALR5th* 183.

**20-2-161.1. Enrollment in postsecondary courses; academic credit; secondary options grant account.**

Reserved. Repealed by Ga. L. 2011, p. 635, § 7/HB 186, effective May 13, 2011.

**Code Commission notes.** — Former Code Section 20-2-161.1 was repealed effective May 13, 2011, by operation of Ga. L. 2011, p. 635, § 7/HB 186. However, Ga. L. 2011, p. 632, § 3/HB 186, effective July 1, 2011, purported to amend this Code section to substitute “State Board of the Technical College System of Georgia” for “State Board of Technical and Adult Education” in paragraph (e)(5) and subsection

(j). For effect of subsequent amendment of a repealed statute, see *Lampkin v. Pike*, 115 Ga. 827 (1902).

**Editor’s notes.** — This Code section was based on Code 1981, § 20-2-161.1, enacted by Ga. L. 1992, p. 462, § 2; Ga. L. 1993, p. 933, § 1; Ga. L. 1995, p. 307, § 1; Ga. L. 2003, p. 185, § 1; Ga. L. 2010, p. 838, § 10/SB 388.

**20-2-161.2. Youth Apprenticeship Program; policies, standards, criteria, procedures, and administrative requirements; pilot projects.**

(a) Any eleventh or twelfth grade pupil or pupil aged 16 or over in any public school in this state may enroll in a Youth Apprenticeship Program which is offered at that public school and which is approved for secondary credit by the department. Such pupil shall be granted release time from the public school to work as an apprentice for any business enterprise which is approved by the department as a qualified employer under the educational apprenticeship program. A pupil shall receive secondary credit for such apprenticeship only under the conditions established by the department. The department is authorized to establish a Youth Apprenticeship Program and to promulgate such policies, standards, procedures, criteria, and administrative requirements as may be necessary to implement the program by rules and regulations. The department shall consult the Department of Labor and the Technical College System of Georgia in developing such policies and procedures. The department’s certified educational apprenticeship plan shall include but not be limited to the following:

- (1) A detailed training plan between employer and apprentice that identifies specific work tasks that will develop workplace competency;
- (2) A minimum of 144 classroom hours of related academic instruction and training;
- (3) A minimum of 2,000 hours of on-the-job training;
- (4) A progressive wage schedule established by the participating employer;
- (5) On-site evaluation of the pupil’s performance;
- (6) Training remediation as necessary at the school site;

(7) A broad range of skills but shall be focused on manufacturing and engineering technology, administration and office technology, and health care;

(8) Development of materials by the business, industry, and labor community in conjunction with the department to promote the awareness of apprenticeships for high school students and encourage recruitment; and

(9) Structural linkage between secondary and postsecondary components of the program leading to the awarding of a high school diploma and postsecondary certification of occupational skills.

The apprenticeship program shall include on-site training only in positions that have been certified by the Department of Labor as highly skilled jobs in business and industry.

(b) The department shall develop pilot projects for the fiscal year 1994 and fiscal year 1995 school years and shall implement and direct a comprehensive apprenticeship program for all school systems by fiscal year 1996. (Code 1981, § 20-2-161.2, enacted by Ga. L. 1992, p. 2772, § 1; Ga. L. 2008, p. 335, § 2/SB 435.)

**20-2-161.3. Program for high school students to attend postsecondary institutions; notice; requirements for course credit; funding; testing.**

(a) For purposes of this Code section, the term:

(1) "Department" means the Department of Education.

(2) "Eligible institution" or "institution" means any eligible postsecondary institution as defined in paragraph (7) of Code Section 20-3-519.

(3) "Eligible student" means a student entering eleventh or twelfth grade who spent the prior school year in attendance at a public high school in this state.

(4) "Prior school year in attendance" means that the student was reported as enrolled in a public school for funding purposes during the preceding October and March full-time equivalent (FTE) program counts in accordance with Code Section 20-2-160.

(5) "Program" means the arrangement authorized by this Code section whereby an eligible student takes all of his or her courses at or through an eligible institution or a virtual course approved by the State Board of Education and receives secondary credit from his or her high school with the goal of completing graduation and high school diploma requirements.



(6) “Secondary credit” means high school credit for courses taken at an eligible institution under the program.

(b) Any eligible student may apply to an eligible institution to take courses at or through that institution which are approved for secondary credit pursuant to subsection (d) of this Code section. If accepted at an eligible institution, such eligible student may take any such approved course at that institution, whether or not the course is taught during the regular public school day, and receive secondary credit therefor under the conditions provided in this Code section. An eligible institution which accepts an eligible student authorized to apply for enrollment under the program shall not receive any state funds for that student unless such institution complies with the requirements of this Code section regarding eligible institutions.

(c) The department shall develop appropriate forms and counseling guidelines for the program and shall make such forms and guidelines available to local school systems and eligible institutions. No later than the first day of April each year, each local school system shall provide general information about the program, including such forms, to all its tenth and eleventh grade students. A local school system shall also provide counseling services in accordance with the counseling guidelines provided by the department to such students and their parents or guardians before the students enroll in the program. Prior to participating in the program, the student and the student’s parent or guardian shall sign the form provided by the school system or by an eligible institution stating that they have received the counseling specified in this subsection and that they understand the responsibilities that shall be assumed in participating in the program.

(d)(1) A local school system shall grant academic credit to an eligible student enrolled in a course in an eligible institution if that course has been approved by the State Board of Education and if such student successfully completes that course. The State Board of Education shall approve any such course which is substantially comparable to a state approved course. The secondary credit granted shall be for the comparable course and course hours approved by the State Board of Education. Upon completion of an eligible institution’s approved course, the eligible student shall be responsible for requesting that the institution notify the student’s local school system regarding his or her grade in that course.

(2) Secondary school credits granted for eligible institution courses under paragraph (1) of this subsection shall be counted toward State Board of Education graduation requirements and subject area requirements of the local school system. Evidence of successful completion of each course and secondary credits granted shall be included in the eligible student’s secondary school records.

(3) The State Board of Education shall establish rules to require local school systems to award a high school diploma to any eligible student who is enrolled at an eligible institution under the program as long as the credit earned at such institution satisfies course requirements needed for the eligible student to complete high school graduation. The department shall consult the Board of Regents of the University System of Georgia and the State Board of the Technical College System of Georgia in developing rules and regulations to be recommended to the State Board of Education for approval regarding the eligibility criteria for program participation.

(e)(1) The department shall pay to eligible institutions through appropriation of state funds the lesser of the following amounts for each participating eligible student enrolled therein, less a records fee of \$200.00 for administration costs of the local school system:

(A) The actual cost of tuition, materials, and fees directly related to the courses taken by the eligible student at such institution; or

(B) The amount that the participating eligible student would have earned under this article if he or she had been in equivalent instructional programs in the local school system.

(2) The total allotment of state funds to the local school system in which a participating student is enrolled at an eligible institution pursuant to this Code section shall be calculated as otherwise provided in this article with an ensuing reduction equivalent to the amount of state funds appropriated to such eligible institution pursuant to this subsection.

(3) The records fee contained in paragraph (1) of this subsection may be increased by the State Board of Education by up to 4 percent annually, at the board's sole discretion.

(4) An eligible institution shall not charge an eligible student for coursework taken pursuant to this program and shall accept the payment made pursuant to paragraph (1) of this subsection as full payment for such eligible student.

(f) The State Board of Education shall establish rules and regulations relating to applicable state and federal testing requirements for eligible students participating in the program.

(g) An eligible student enrolled in an eligible institution for secondary credit shall not be eligible for any other state student financial aid at an eligible institution for courses taken under the program.

(h) Hours for courses taken at an eligible institution pursuant to this Code section by a participating eligible student shall not count against any maximum hourly caps which may be applicable for purposes of HOPE scholarships or grants.

(i) Any person who knowingly makes or furnishes any false statement or misrepresentation, or who accepts such statement or misrepresentation knowing it to be false, for the purpose of enabling an eligible institution to obtain wrongfully any payment under this Code section shall be guilty of a misdemeanor. (Code 1981, § 20-2-161.3, enacted by Ga. L. 2009, p. 228, § 2/HB 149; Ga. L. 2011, p. 632, § 3/HB 49.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “State Board of Technical and Adult Education” in the last sentence of paragraph (d)(3).

**Editor’s notes.** — Ga. L. 2009, p. 228, § 1/HB 149, not codified by the General Assembly, provides that: “This Act shall be known and may be referred to as the ‘Move on When Ready Act.’”

### OPINIONS OF THE ATTORNEY GENERAL

**Fingerprinting for offenses under subsection (i).** — Any misdemeanor offenses arising under O.C.G.A. § 20-2-161.3(i) are offenses for which those charged are to be fingerprinted. 2010 Op. Att’y Gen. No. 2010-2.

### 20-2-162. Annual recalculation of amount of funding; midterm adjustment.

(a) The State Board of Education shall annually recalculate the total amount needed under the Quality Basic Education Formula for the midterm adjustment for the current fiscal year using the average of the first and the projected second full-time equivalent counts for the current fiscal year, with the first full-time equivalent count weighted two parts and the projected second full-time equivalent count weighted one part. If the total amount needed by each local school system when recalculated is greater than the initial amount calculated, then the state board shall increase the total allotment for said system by the difference between the recalculation and the initial calculation. All funds allocated as the result of this recalculation to a local school system for direct instructional costs as defined in paragraph (1) of subsection (a) of Code Section 20-2-167 shall be applied to the direct instructional costs of the instructional programs specified in Code Section 20-2-161 which had full-time equivalent counts pursuant to this Code section that are higher than the full-time equivalent counts upon which the initial allocations were based. The balance of the funds allocated to a local school system as the result of this recalculation must be applied to items specified in Code Sections 20-2-182 through 20-2-186 for instructional programs specified in subsection (b) of Code Section 20-2-161 and shall not be expended for any program or service explicitly excluded from the full-time equivalent count in Code Section 20-2-160. The total amount of increased funding required by the midterm adjustment shall be requested by the state board and shall



demonstrate for each receiving local school system the average full-time equivalent count used in the initial calculation compared to the midterm average count for each program category system wide. If the recalculation for a local school system is less than the initial calculation, the amount of funds initially allotted to the system shall not be reduced for the current fiscal year. Local school systems which fail to provide the state board with complete full-time equivalent student counts by instructional program in the manner and by dates prescribed by the state board shall not be eligible for recalculation of their current year allotment.

(b) A midterm adjustment in a local school system's local five mill share shall be made if:

(1) The most recent actual property tax digest for educational maintenance and operation of a local school system, as approved by the Department of Revenue, is less than the actual property tax digest for educational maintenance and operation approved by the Department of Revenue for the year used initially to calculate the system's local five mill share pursuant to Code Section 20-2-164, and such reduction is due to more accurate assessments or actual loss in tangible property or a combination of these factors as determined by the Department of Revenue; and

(2) The most recent equalized adjusted school property tax digest for the local school system is less than the equalized adjusted school property tax digest for the year used initially to calculate the system's local five mill share.

Such a midterm adjustment shall be made by reducing the initial local five mill share by the percentage decrease over the most recent two years in the actual property tax digest for educational maintenance and operation. The gross value of property prior to deduction of any exemptions shall be used throughout the calculations under this subsection. The provisions of this subsection shall apply only to the midterm adjustment of local five mill share as provided in this Code section. (Code 1981, § 20-2-162, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1988, p. 1991, § 2; Ga. L. 1989, p. 687, § 1; Ga. L. 1990, p. 1354, § 3; Ga. L. 1992, p. 1335, § 2; Ga. L. 2000, p. 618, § 22.)

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

### **20-2-163. Contract with adjoining local school system.**

Reserved. Repealed by Ga. L. 1987, p. 1169, § 1, effective July 1, 1987.

**Editor's notes.** — This Code section was based on Ga. L. 1985, p. 1657, § 1.

**20-2-164. Local five mill share funds.**

(a) The State Board of Education shall calculate the amount of local five mill share funds that each local school system shall be required to spend each fiscal year to participate in the Quality Basic Education Program as follows:

(1) Unless the combined local five mill share total for all local school systems in the state, when calculated pursuant to this paragraph, exceeds 20 percent of the sum of the Quality Basic Education Formula amounts, as calculated pursuant to subsection (d) of Code Section 20-2-161, the amount of each local school system's local five mill share shall be calculated as follows:

(A) Determine the most recent equalized adjusted school property tax digest for the local school system less the amount attributable to timber calculated pursuant to paragraph (2) of subsection (b) of Code Section 48-5-274, multiply the difference by .4, and add to that product the amount attributable to timber calculated pursuant to paragraph (2) of subsection (b) of Code Section 48-5-274;

(B) From the amount calculated in subparagraph (A) of this paragraph deduct the total amount calculated pursuant to subsection (g) of this Code section; and

(C) Multiply the remainder calculated in subparagraph (B) of this paragraph by .005; or

(2) If the combined local five mill share total for all local school systems in this state, when calculated pursuant to paragraph (1) of this subsection, exceeds 20 percent of the sum of the Quality Basic Education Formula amounts, as calculated pursuant to subsection (d) of Code Section 20-2-161, then the amount of each local system's five mill share shall be calculated as follows:

(A) Multiply the total amount of Quality Basic Education Formula amounts to be expended for all local school systems combined, as calculated for each local school system pursuant to Code Section 20-2-161, by .2;

(B) Divide the product calculated in subparagraph (A) of this paragraph by the sum of the local five mill share amounts for all local school systems in this state as calculated for each local school system pursuant to subparagraph (C) of paragraph (1) of this subsection;

(C) Multiply the amount calculated in subparagraph (B) of this paragraph by .005; and

(D) Multiply the product calculated in subparagraph (C) of this paragraph by the remainder calculated in subparagraph (B) of paragraph (1) of this subsection.

(b)(1) Each local school system shall apply the total amount of its local five mill share funds to programs funded under this article and in the manner so earned as indicated on the allotment sheets as provided by the State Board of Education; provided, however, that no portion of the local five mill share funds is applied to the financing of educational programs and services operated at the option of the local school system or for any grant program which explicitly excludes the application of local funds or which explicitly requires an application of local funds other than from the local five mill share.

(2) The local school system may apply revenues toward the local five mill share from any source except: funds derived from the federal government which were not designed to replace local tax revenues; state funds; student tuition and fees; funds transferred from another local unit of administration; and other sources specifically prohibited by provisions of this article; provided, however, that an independent school system may apply appropriations from the taxing authority of its municipal government.

(c)(1) The state auditor shall furnish to the State Board of Education the equalized adjusted school property tax digests in accordance with Code Section 48-5-274.

(2) Except as provided in subsection (b) of Code Section 20-2-162, the sums of the most recent equalized adjusted school property tax digests shall be used to make the calculations required by subsection (a) of this Code section for each fiscal year.

(d) Each municipality having an independent school system and each county government shall annually provide the Department of Revenue with the following information for each local school system within its jurisdiction:

(1) The total number of granted state-wide constitutional homestead exemptions for occupied homes pursuant to Code Section 48-5-44 exclusive of those homestead exemptions provided pursuant to Code Sections 48-5-47, 48-5-48, and 48-5-52;

(2) The total number of granted state-wide constitutional homestead exemptions for disabled veterans pursuant to Code Section 48-5-48;

(3) The amounts of tax and nontax revenues by source which have been distributed by said local government to local school systems for



educational maintenance and operation; provided, further, that if the total tax revenues collected by a municipal government exceed the amount of all revenues distributed to its school system, the total amount of tax revenues collected by the municipal government shall also be submitted to the Department of Revenue. Such data shall be submitted to the Department of Revenue no later than the date required for the submission of the local tax digests to the Department of Revenue; and

(4) The difference between the actual assessed valuation of agricultural property and the valuation that would be assessed if all agricultural property were assessed at 40 percent of its fair market value as provided in Code Section 48-5-7; provided, however, that if the taxing authority of a local school system assesses property at a legal standard other than 40 percent of fair market value, the actual assessed valuation used in this calculation shall be reduced to represent the amount which would be assessed if the jurisdiction assessed property at 40 percent of fair market value.

(e) The Department of Revenue shall annually verify, certify as correct, and furnish the State Board of Education with the following data for each local school system by November 15:

(1) All tax and nontax revenues by source for the preceding fiscal year which were distributed for educational maintenance and operation; provided, however, such tax and nontax revenues shall exclude any state revenue collections which were previously distributed to the state general fund and then appropriated or allocated to local school systems; and provided, further, that if the total tax revenues collected by a municipal government exceed the amount of all revenues which it distributed to its school system, the total amount of revenues distributed to the school system shall be designated as tax revenues in the report of the Department of Revenue to the state board;

(2) The number of exemptions granted for state-wide constitutional homestead exemptions for owner occupied homes pursuant to Code Section 48-5-44, exclusive of those homestead exemptions provided pursuant to Code Sections 48-5-47, 48-5-48, and 48-5-52, for the preceding calendar year;

(3) The number of exemptions granted for state-wide constitutional homestead exemptions for disabled veterans pursuant to Code Section 48-5-48 for the preceding calendar year; and

(4) The difference between the actual assessed valuation of agricultural property and the valuation that would be assessed if all agricultural property were assessed at 40 percent of its fair market value as provided in Code Section 48-5-7, adjusted pursuant to paragraph (4) of subsection (d) of this Code section.

(f) The Office of Planning and Budget shall annually furnish to the State Board of Education the estimated number of individuals age 65 or older residing in each local school system and the estimated percent that such individuals are of the total population for each local school system. The Office of Planning and Budget shall furnish all information requested by the General Assembly regarding the procedure for estimating this percent.

(g) For purposes of calculation under this Code section and Code Section 20-2-165, the equalized adjusted school property tax digest, adjusted by paragraph (1) of subsection (a) of this Code section, shall be reduced by the sum of the following products:

(1) The product of the number of constitutional homestead exemptions for owner occupied homes pursuant to Code Section 48-5-44 granted for that year, exclusive of those homestead exemptions provided pursuant to Code Sections 48-5-47, 48-5-48, and 48-5-52, multiplied by the amount per exemption authorized under Code Section 48-5-44; provided, further, that in any city operating an independent school system which provides a homestead exemption through local legislation comparable to that provided in Code Section 48-5-44, the product calculated in this paragraph shall represent the number of homestead exemptions provided through the applicable local legislation multiplied by the amount per exemption authorized in Code Section 48-5-44, or by the amount per exemption authorized in the applicable local legislation, whichever is less; and provided, further, that if the amount per exemption authorized in Code Section 48-5-44 has been changed subsequent to the year of the applicable digest, the more recently adopted amount per exemption shall be used for the product calculated in this paragraph;

(2) The product of the number of constitutional homestead exemptions for disabled veterans pursuant to Code Section 48-5-48 granted for that year, multiplied by the amount per exemption authorized under that Code section; provided, further, that in any city operating an independent school system which provides a homestead exemption through local legislation comparable to that provided in Code Section 48-5-48, the product calculated in this paragraph shall represent the number of homestead exemptions provided through the applicable local legislation multiplied by the amount per exemption authorized in the applicable local legislation, whichever is less; and provided, further, that if the amount per exemption authorized in Code Section 48-5-48 has been changed subsequent to the year of the applicable digest, the more recently adopted amount per exemption shall be used for the product calculated in this paragraph;

(3) The product of the estimated number of persons age 65 or older residing in the local school system during that year multiplied by 5,000;

(4) The product which results from the following calculations:

(A) Subtract the estimated state-wide percentage that persons age 65 or older is of the total population, excluding military personnel and institutional population, from the respective percentage for the local school system. If the respective percentage for the local school system is less than the state-wide percentage, a difference of zero shall be used in the calculations in this paragraph;

(B) Multiply the difference which results from subparagraph (A) of this paragraph by 1,000; and

(C) Multiply the product which results from subparagraph (B) of this paragraph by the estimated number of persons age 65 or older residing in the local school system during that year; and

(5) The product which results from the following calculations:

(A) Divide the amount reported in paragraph (4) of subsection (e) of this Code section by the average ratio of assessed value to true value used to calculate the most recent equalized adjusted school property tax digest pursuant to Code Section 48-5-274; and

(B) Multiply the quotient which results from subparagraph (A) of this paragraph by .4.

(h) In the event a local school system fails to provide for or to use the amount of local funds required to be raised and applied by the local school system in order to participate in the Quality Basic Education Program as defined by this article during any fiscal year, the State Board of Education shall calculate the total amount of such funds and add that amount to the local five mill share being required of the local school system for an ensuing fiscal year. Further, should the state auditor cite an audit exception which requires that a local school system return an amount of funds to the state general fund, the state board shall add said amount to the local five mill share of the local school system for an ensuing fiscal year if the state board has not been provided documentation that the amount has already been paid to the state general fund. Such additions will thereby reduce the amount of state funds which shall be allotted to such local school systems. If a local school system does not fulfill its obligation to provide a local five mill share or to comply with any other provisions of this article for any fiscal year, the state board may withhold any portion or all of the state funds to be allotted during the current or an ensuing fiscal year. (Code 1981, § 20-2-164, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1991, p. 1531, § 3; Ga. L. 1991, p. 1903, § 13; Ga. L. 1992, p. 6, § 20; Ga. L. 1994, p. 668, § 2; Ga. L. 1996, p. 6, § 20; Ga. L. 2000, p. 618, § 23; Ga. L. 2000, p. 1683, § 10; Ga. L. 2002, p. 415, § 20.)



**Editor's notes.** — Ga. L. 1991, p. 1903, § 14, effective April 24, 1991, not codified by the General Assembly, provides: "To assist counties and boards of education in planning, volumes of standing timber harvested in each county through the last business day of the second and third quarters of 1991 shall be reported by the purchaser, or by the harvester if there is no purchaser, to the tax assessors of the county or counties in which the timber was harvested by November 15, 1991. Such reports shall show the number of pounds, if available, or measured volume of softwood and hardwood pulpwood, chip and saw logs, saw timber, poles, posts, and fuel wood so harvested. The commissioner, after consultation with the Georgia Forestry Commission, shall provide the tax assessor of each county with the weighted average unit price in pounds and measured volume paid through the last business day of such period for each such

product class, no later than November 15, 1991."

Ga. L. 1991, p. 1903, § 15, provides that the 1991 amendment to this Code section was applicable beginning January 1, 1992, with respect to ad valorem taxation of timber and was applicable beginning January 1, 1992, for all other purposes. Taxation for prior periods shall continue to be governed by prior law.

Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

Ga. L. 2000, p. 1683, § 11(c), not codified by the General Assembly, provides in pertinent part that Section 10 of the Act shall be applicable to the 2000 tax digests and any subsequent tax digests.

**Law reviews.** — For note on the 1991 amendment of this Code section, see 8 Ga. St. U. L. Rev. 182 (1992).

## **20-2-165. Equalization grants; annual calculation; allocation.**

(a) As used in this Code section, the term:

(1) "Assessed valuation" is defined as 40 percent of the equalized adjusted property tax digest reduced by the amount calculated pursuant to subsection (g) of Code Section 20-2-164.

(2) "Assessed valuation per weighted full-time equivalent count" is defined as the assessed valuation for the most recent year available divided by the weighted full-time equivalent count for the year of the digest.

(3) "Effective millage rate" is defined as local tax revenues divided by the assessed valuation and multiplied by 1,000; provided, however, that if the amount of local tax revenues is subsequently adjusted as a result of an audit of a local school system's annual financial report, the increase or decrease in local tax revenues resulting from the audit shall cause an adjustment to be made in the effective millage rate that was calculated initially. Any net change in the amount of equalization dollars earned as a result of such adjustment shall be applied to the amount of the local school system's equalization grant in a subsequent fiscal year.

(4) "Eligible full-time equivalent program count" is defined as the sum of the full-time equivalent resident student count and full-time equivalent nonresident student count pursuant to subsection (d) of Code Section 20-2-160 for each program specified pursuant to sub-

section (b) of Code Section 20-2-161; provided, however, that each local school system's total full-time equivalent nonresident student count for all programs except programs for persons with disabilities shall not exceed the lesser of the count for fiscal year 2000 or the count for any ensuing fiscal year, unless the local school system serves under contract all of the students in one or more grade levels from an adjoining system or unless the system serves students from an adjoining system under court order.

(5) "Equalized adjusted property tax digest" is defined as the most recent equalized adjusted property tax digest furnished to the State Board of Education pursuant to paragraph (1) of subsection (c) of Code Section 20-2-164.

(5.1) "Equivalent millage" means for a local school system that is eligible to receive local option sales tax proceeds for maintenance and operation purposes, the combination of property tax revenue and sales tax revenue representing the amount that would be generated by a designated rate of mills.

(6) "Guaranteed valuation" is defined as the state-wide average in dollars of assessed valuation per weighted full-time equivalent count. Such state-wide average shall not include the local school systems ranked in the highest 5 percent or the lowest 5 percent, where the ranking of school systems is such that the one-hundredth percentile school system is that with the highest amount in dollars of assessed valuation per weighted full-time equivalent count.

(7) "Local tax revenues" is defined as the sum of tax revenues for a local school system as furnished to the Department of Education by the school system in its annual financial report, reduced by the total amount of general funds expended for capital outlay or transferred into an escrow account for capital outlay purposes for the most recent fiscal year such data are available and increased by any federal funds designed to replace local tax revenues provided to the said system; provided, however, that the local school system has furnished the state board with acceptable documentation which clearly identifies the source or sources of such federal funds.

(8) "Most recent weighted full-time equivalent count" is defined as the weighted full-time equivalent count derived from full-time equivalent program count data obtained for the purpose of determining the funds initially needed to finance the Quality Basic Education Formula pursuant to subsection (d) of Code Section 20-2-160 for the next ensuing fiscal year.

(9) "Qualified local school system" is defined as any local school system:

(A) Having an assessed valuation per weighted full-time equivalent count for the year of the digest which is below the guaranteed valuation;

(B) Having an effective millage rate greater than the millage rate applied to calculate the local five mill share pursuant to subsection (a) of Code Section 20-2-164; and

(C) Beginning July 1, 2015, having a millage rate or an equivalent millage of at least 12 mills; beginning July 1, 2016, having a millage rate or an equivalent millage of at least 12 1/2 mills; beginning July 1, 2017, having a millage rate or an equivalent millage of at least 13 mills; beginning July 1, 2018, having a millage rate or an equivalent millage of at least 13 1/2 mills; beginning July 1, 2019, and thereafter, having a millage rate or an equivalent millage of at least 14 mills.

(10) "Weighted full-time equivalent count" is defined as the sum of all eligible full-time equivalent program counts multiplied by their respective program weights in effect during the fiscal year that the full-time equivalent program counts were obtained pursuant to Code Section 20-2-161.

(11) "Weighted full-time equivalent count for the year of the digest" is defined as the weighted full-time equivalent count derived from full-time equivalent program count data obtained for the purpose of determining the funds initially needed to finance the Quality Basic Education Formula pursuant to subsection (d) of Code Section 20-2-160 for the current fiscal year.

(b) The State Board of Education shall annually calculate the equalization grant for each qualified local school system in the following manner:

(1) Subtract the assessed valuation per weighted full-time equivalent count for the local school system from the guaranteed valuation;

(2) Divide the difference resulting from paragraph (1) of this subsection by 1,000;

(3) Subtract five from the effective millage rate for the local school system and use the resulting number of effective mills or 15 effective mills, whichever is less, as the number of effective mills to be equalized;

(4) Multiply the quotient resulting from paragraph (2) of this subsection by the number of effective mills to be equalized pursuant to paragraph (3) of this subsection; and

(5) Multiply the product resulting from paragraph (4) of this subsection by the most recent weighted full-time equivalent count for the local school system.



The resulting amount shall be the equalization grant for the ensuing fiscal year; provided, however, that for each local school system which serves under contract all of the students in one or more grade levels from an adjoining system and for each local school system which sends under contract all of the students in one or more grade levels to an adjoining system, the equalization grant shall be calculated to represent the amount that would be earned if the students transferred under said contract were included in the full-time equivalent counts of the local school system in which they reside; provided, further, that any equalization grant to be earned by a local school system sending students to another system under the provisions of such a contract shall be reduced by an amount which represents the equalization funds earned per weighted full-time equivalent student multiplied by the total weighted full-time equivalent count for students transferred, and any equalization grant to be earned by the local school system receiving students under said contract shall be increased by the same amount.

(c) The State Board of Education shall allocate respectively the amount calculated under subsection (b) of this Code section to each qualified local school system. For the first effective year of the merger of any two or more local school systems, the equalization grant shall be the addition of amounts which would have been separately earned by the systems participating in the merger or the amount which would have been earned if the systems had already been merged during the year of the applicable digest, whichever is greater. No portion of local five mill share shall be applied to such equalization grants. In the event sufficient funds are not appropriated in a fiscal year to the state board to allot the full amount of equalization grants calculated to be payable to qualified local school systems as provided in this Code section, the state board shall proportionately reduce the amount of funds to be allocated to qualified local school systems.

(d)(1) A midterm adjustment in a local school system's equalization grant shall be made if:

(A) The school system's assessed valuation per weighted full-time equivalent count is at or below the guaranteed valuation; and

(B) The school system increases the actual millage levied against its digest for maintenance and operation.

(2) If made, the midterm adjustment to the equalization grant shall be calculated as follows:

(A) Calculate the percentage change in the actual millage rate for a school system by subtracting the actual millage rate for the prior year from the actual millage rate for the current year and dividing by the actual millage rate for the prior year; provided,

however, that for local school systems that impose local option sales taxes for school maintenance and operation, as authorized by law, the Department of Education shall be authorized to adjust this calculation by adding the equivalent property tax millage that would be needed to produce the revenue raised by the local option sales tax to the actual millage rate and calculating a revised percentage change;

(B) If the result from subparagraph (A) of this paragraph is a positive number, multiply the number of effective mills calculated as part of the original equalization grant calculation for a given year by the percentage increase calculated in subparagraph (A) of this paragraph. Add the product of this calculation to the effective number of mills from the original equalization grant calculation as described in subsections (a) through (c) of this Code section;

(C) Recalculate the equalization grant substituting the revised number of effective mills calculated in subparagraph (B) of this paragraph; and

(D) Subtract the initial equalization grant amount from the amount calculated in subparagraph (C) of this paragraph.

The resulting amount shall be the midterm adjustment to the equalization grant.

(e) If the result from subparagraph (A) of paragraph (2) of subsection (d) of this Code section is a positive number, the local school system's number of effective mills used in the calculation of its equalization grant for the ensuing fiscal year shall be adjusted by multiplying the number of effective mills calculated pursuant to paragraph (3) of subsection (b) of this Code section by the percentage increase calculated in subparagraph (A) of paragraph (2) of subsection (d) of this Code section. The resulting amount shall be the adjusted number of effective mills used in the calculation of the equalization grant pursuant to paragraph (3) of subsection (b) of this Code section; provided, however, that in no event shall the adjusted number of effective mills to be equalized exceed 15 effective mills. (Code 1981, § 20-2-165, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1988, p. 612, § 7; Ga. L. 1990, p. 1354, § 4; Ga. L. 1992, p. 1335, § 3; Ga. L. 1994, p. 668, § 3; Ga. L. 1995, p. 1302, § 13; Ga. L. 2000, p. 618, § 24; Ga. L. 2001, p. 148, § 6; Ga. L. 2006, p. 743, § 3/SB 515; Ga. L. 2012, p. 367, § 1/HB 824.)

**The 2012 amendment**, effective July 1, 2012, in subsection (a), added paragraph (a)(5.1); substituted the present provisions of paragraph (a)(6) for the former provisions, which read: "Guaranteed valuation school system" is defined as the

local school system ranking at the seventy-fifth percentile in dollars of assessed valuation per weighted full-time equivalent count, where the ranking of school systems is such that the one-hundredth percentile school system is

that with the highest amount in dollars of assessed valuation per weighted full-time equivalent count. For the purpose of determining the assessed valuation per weighted full-time equivalent count of the guaranteed valuation school system only, a reduction of the assessed valuation for exemptions authorized by Code Sections 48-5-44 and 48-5-48 shall be calculated whether such exemptions are granted or not granted by the guaranteed valuation school system.”; substituted the present provisions of paragraph (a)(9) for the former provisions, which read: “‘Qualified local school system’ is defined as any local school system having an assessed valuation per weighted full-time equivalent count for the year of the digest ranking below the guaranteed valuation school system and having an effective millage rate greater than the millage rate applied to calculate the local five mill share pursuant to subsection (a) of Code Section 20-2-164.”; in paragraph (b)(1), deleted “assessed valuation per weighted full-time equivalent count for the” following “from the” and deleted “school system” at the end; substituted the present provisions of subparagraph (d)(1)(A) for the

former provisions, which read: “The school system ranks at or below the seventy-fifth percentile in dollars of assessed valuation per weighted full-time equivalent count, where the ranking of school systems is such that the one-hundredth percentile school system is that with the highest amount in dollars of assessed valuation per weighted full-time equivalent count; and”; and, in subsection (e), deleted the former last sentence, which read: “For Fiscal Year 2006 only, adjustments to equalization grants as provided in this subsection shall be allocated to local school systems following the adoption of the amended Appropriations Act for Fiscal Year 2006.”

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1987, “full-time equivalent” was substituted for “FTE” throughout this Code section.

**Editor’s notes.** — Ga. L. 1995, p. 1302, § 13(6), provided for the substitution of “disability” and “disabilities” for “handicap” and “handicaps”; however, those words do not appear in this Code section.

Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

### **20-2-165.1. Charter system earnings for each full-time equivalent student.**

In addition to the amounts earned by a charter system pursuant to subsection (b) of Code Section 20-2-161, a charter system shall earn 3.785 percent of the base amount established pursuant to subsection (a) of Code Section 20-2-161 for each full-time equivalent student in each school within the charter system. (Code 1981, § 20-2-165.1, enacted by Ga. L. 2008, p. 603, § 2A/HB 881.)

### **20-2-166. State funds; calculation; allotment; distribution.**

(a) The State Board of Education shall calculate the total amount of state funds to be allotted to a local school system by:

(1) Adding the amount calculated for the local school system for grants authorized under the provisions of this article which do not expressly involve a local share, except the state school lunch grant pursuant to Code Section 20-2-187, to the amount calculated for the local school system for the Quality Basic Education Formula pursuant to subsection (d) of Code Section 20-2-161;



(2) Subtracting the amount of funds required by the local school system for local five mill share pursuant to Code Section 20-2-164 from the sum in paragraph (1) of this subsection;

(3) Adding any equalization grant which may be earned pursuant to subsection (c) of Code Section 20-2-165, the state school lunch grant pursuant to Code Section 20-2-187, and the portion to be paid from state funds for all grant programs authorized by this article which involve a local share, except the Quality Basic Education Formula, to the difference in paragraph (2) of this subsection, the result being the amount of state funds which the state board shall allot over the course of the fiscal year to the local school system, except that the amount of state funds allotted may be increased by the midterm adjustment as provided in Code Section 20-2-162. The state board shall, to the extent necessary, reduce the amount of state funds to be allocated to local school systems in support of the Quality Basic Education Program or in support of any of the purposes for which state funds might be allotted to local school systems under this article if the amount of state funds appropriated in support of such program or in support of any one or more of the purposes for which allotments of funds are provided by this article is not adequate to finance the cost of the state portion of such program or such purposes, determined in accordance with this article; and

(4) If a charter system, adding any additional amount which may be earned pursuant to Code Section 20-2-165.1.

(b) The State Board of Education shall, by regulation, provide for distribution of state funds allotted to local units of administration under this article and budgets approved by the state board. The state board is authorized to provide for distribution of state funds to local units of administration at such times and in such manner as will most likely meet the periodic needs of local units for the state allotted funds. In determining the time and manner for distribution of state funds, the state board may consider the time at which local school tax funds shall be collected and made available to local units of administration. State funds to be distributed to local units under this article shall be withdrawn from the state treasury on requisitions to be signed by the State School Superintendent, which shall be signed in accordance with such regulations and directions of the state board. (Code 1981, § 20-2-166, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1991, p. 94, § 20; Ga. L. 2000, p. 618, § 96; Ga. L. 2008, p. 603, § 2B/HB 881.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1987, “Quality Basic Education Formula” was substituted for “Quality Basic Education for-

mula” in paragraph (a)(1) and in the first sentence of paragraph (a)(3).

**Editor’s notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly,

provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

### OPINIONS OF THE ATTORNEY GENERAL

**State board may condition continued state fiscal assistance on implementation of state established reading requirements.** — Although the State Board of Education does not have explicit authority to directly preclude a student in a local school district from progressing from one grade level to another if the child

is not capable of reading in the higher grade level, the board may, as a condition of continued state fiscal assistance, require local boards of education to implement state board established reading requirements. 1975 Op. Att'y Gen. No. 75-63.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 119 et seq.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 13.

**20-2-167. Funding for direct instructional, media center, and staff development costs; computerized uniform budget and accounting system; submission of local budget to state board; provision of certain information by local boards; waiver of expenditure controls.**

(a)(1) The State Board of Education shall annually compute, based upon the initial allotment of funds to each local school system, the total funds needed for direct instructional costs for each program identified in Code Section 20-2-161, specifying the number of positions earned and salaries and operational costs portions. "Direct instructional costs" is defined as those components of the program weights which are specified in subsections (a) through (g) of Code Section 20-2-182. In computing the total funds needed for direct instructional costs for each program, the state board shall apply the percentage that these costs represent of the total costs used in developing the program weights. The direct instructional costs for the five instructional programs for disabled students shall be summed into one amount for special education. Following the midterm adjustment, the state board shall issue allotment sheets for each local school system and each school reflecting the total amount of earnings, initial earnings, and midterm adjustment, if any, for each program authorized by Code Section 20-2-161. For each such program, each local school system shall spend a minimum of 90 percent of funds designated for direct instructional costs on the direct instructional costs of such program at the school site in which the funds were earned, except that funds earned for special education programs shall be summed for the purposes of this expenditure control. For the purposes of this expenditure control, funds earned for counselors and

technology specialists shall each be summed to the school level. Only the state salary amounts resulting from the amount earned on the state-wide salary schedule as approved by the State Board of Education pursuant to Code Section 20-2-212 plus associated benefits funded by the state and the salaries and any state earned benefits or comparable state earned benefits of technology specialists and classroom aides may be applied to the salary cost components for the purpose of meeting this expenditure control. Except as otherwise provided by law or rule and regulation of the state board, local school systems may decide whether direct instructional funds shall be used for teacher salaries, aide salaries, instructional material or equipment, or any other appropriate direct instructional expense; provided, however, that 100 percent of funds earned for direct instructional salaries shall be expended for salaries of direct instructional personnel and classroom aides. The total number of positions earned for direct instruction as specified in Code Section 20-2-182, adjusted for maximum class size, shall be employed for the delivery of services for which the funds were earned. This position control shall be for the kindergarten program, the kindergarten early intervention program, the primary grades program, and the primary grades early intervention program combined and the combined total for all other programs; provided, however, that positions earned for art, music, foreign language, and physical education, technology specialists, and counselors shall be totaled for all programs. Fractional amounts may be combined and used for any direct instructional position. Funds earned for any fractional amounts may be used for any direct instructional expense. Quality Basic Education Formula funds in excess of the amount required by this paragraph to be expended by a local school system for the direct instructional costs of an instructional program specified by Code Section 20-2-161 which are not expended for direct instructional costs must be returned to the state treasury.

(2) The state board shall annually compute, based upon the initial allotment of funds to each local school system, the total funds needed system wide for media center costs, specifying the salaries and materials cost portions. In computing the total funds needed for media center costs, the state board shall apply the percentage that these costs represent of the total costs used in developing program weights. Following the midterm adjustment, the state board shall issue allotment sheets for each local school system and each school reflecting the total amount of earnings, initial earnings, and midterm adjustment, if any, for each program authorized by Code Section 20-2-161. Each local school system shall spend 100 percent of the funds designated for media center costs for such costs, and a minimum of 90 percent of such funds shall be spent at the school site in which such funds were earned.



(3) The state board shall annually compute, based upon the initial allotment of funds to each local school system, the total funds needed system wide for staff development costs. In computing the total funds needed for these categories, the state board shall apply the percentage that these costs represent of the total costs used in developing the program weights. Following the midterm adjustment, the state board shall issue allotment sheets for each local school system and each school reflecting the total amount, initial earnings, and midterm adjustment, if any, of earnings for each program specified in subsection (b) of Code Section 20-2-161. Each local school system shall spend 100 percent of the funds designated for staff and professional development costs, as allowed by State Board of Education policy, for such costs. The State Board of Education, in consultation with the Professional Standards Commission, shall establish category-level expenditure controls to ensure that the staff development funds allotted pursuant to this paragraph are utilized in such a manner as to help align professional learning with results in improved student achievement. Such category-level expenditure controls shall be established no later than July 1, 2015, and shall reflect the revised certification renewal rules established by the Professional Standards Commission pursuant to paragraph (4.1) of subsection (b) of Code Section 20-2-200 regarding the impact of professional learning on student achievement. For each local school system which is granted an additional allotment for the midterm adjustment pursuant to Code Section 20-2-162, these amounts shall be increased by the portion of the midterm adjustment allotment which is applied to staff development. In the event a local school system does not actually enroll the full-time equivalent count that was anticipated by its initial allocation and it elects to return a portion of its allocation for staff development and professional development costs to the state, the 100 percent amount for staff development shall be reduced by that returned amount. Quality Basic Education Formula funds in excess of the amount required by this paragraph to be expended by a local school system for staff development and professional development of certificated and instructional personnel which are not expended for this purpose may be expended only for staff development of noncertificated personnel employed by the local school system and the members of the local school board, for meeting certification requirements of personnel, and for administration and operation of the staff development and professional development programs authorized pursuant to subsection (h) of Code Section 20-2-182.

(4) All funds earned pursuant to this article may be expended only for the operation of educational programs and services explicitly authorized under this article.

(5) The budget of each local school system shall reflect all anticipated revenues from each source. The budget of each local school

system shall designate all of such anticipated revenues among the several funds or accounts of the system and shall not leave any anticipated revenues undesignated. Except as otherwise provided in this paragraph, all amounts allocated to each fund or account and any existing balance in each fund or account shall be intended for expenditure within the budget year for the purposes of that fund or account. There shall be no fund or account in the nature of a "surplus" or "unobligated surplus" fund or account. Each local school system may, however, establish a single reserve fund or reserve account intended to cover unanticipated deficiencies in revenue or unanticipated expenditures, provided that the budget for any year shall not allocate to such reserve fund or reserve account any amounts which, when combined with the existing balance in such fund or account, exceed 15 percent of that year's total budget. A local school system may also establish one or more capital accumulation funds or accounts, and amounts may be allocated to such capital accumulation funds or accounts for expenditure in future budget years only if the purpose for which such amounts will be expended and the anticipated date of expenditure of such amounts are clearly and specifically identified. The purpose of this paragraph is to prohibit local school systems from accumulating surplus funds through taxation without accounting to the taxpayers for how such funds will be expended, and this paragraph shall be liberally construed to accomplish this purpose.

(b)(1) The State Board of Education shall establish a computerized uniform budget and accounting system as a component of the state-wide comprehensive educational information system established pursuant to Code Section 20-2-320 and shall establish uniform regulations to be implemented by local units of administration. The computerized uniform budget and accounting system shall conform to generally accepted governmental accounting principles which shall include, but not be limited to, the following costing information:

- (A) Instructional program involved;
- (B) Whether basic education or enrichment in purpose;
- (C) Fund source or sources; and

(D) Major program components such as instructional personnel, instructional operations, facility maintenance and operation, media center operation, school administration, system administration, staff development, or professional development.

(2) The state board shall prescribe information that must be submitted to the state board and the time it must be submitted. In determining the information needed and the time for submission, the state board shall take into consideration the information and times

identified by the Office of Student Achievement as necessary to the implementation of the accountability program provided for in Part 3 of Article 2 of Chapter 14 of this title. The state board is authorized to establish a financial review section for the limited purpose of reviewing financial records and accounting of local governing boards and assisting local units of administration in training personnel in financial and budgetary accounting.

(c) The State Board of Education is authorized to prescribe a date by which each local unit of administration must submit a budget to the state board. The regulations developed by the state board must make adequate provision for local review and modification prior to local approval and submittal to the State School Superintendent. The State School Superintendent shall provide for the examination and preparation of a written report on the budget of each local unit and submit a copy to the state board and to the respective local unit of administration. The state board shall either accept or reject the budget of a local unit.

(d) The standards set forth in this article shall be construed as setting out a basic plan for the direction of the State Board of Education in planning a program and presenting proposals to the Governor and to the General Assembly. Nothing in this article shall be construed as amending or modifying in any way Part 1 of Article 4 of Chapter 12 of Title 45, known as the "Budget Act." The state board shall, in all of its programs involving allocation or expenditure of funds, be governed and controlled by Part 1 of Article 4 of Chapter 12 of Title 45 and all other laws of general application pertaining to the handling and expenditure of state funds, none of which is amended, modified, or repealed by this article unless specifically so provided in this article.

(e) No later than October 1, 2005, the State Board of Education shall develop rules and regulations requiring that each local board of education provide information as specified by the state board and which is not specifically made confidential by law, including school site budget and expenditure information and site average class size by grade, to members of the school council and the general public.

(f) (Repealed effective July 1, 2015.) (1) For school years 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014, and 2014-2015 only, the expenditure controls contained in subsection (a) of this Code section relating to direct instructional costs, media center costs, and staff and professional development costs shall be waived and shall not apply to nor be enforceable against a local school system.

(2) Each local school system shall report to the Department of Education its budgets and expenditures of the funds received pursuant to this Code section as a part of its report in October for the FTE count and on March 15.



(3) No penalty shall be applied to a local school system for failure to comply with expenditure controls set out in subsection (a) of this Code section, notwithstanding any law to the contrary, so long as such local school system complies with this subsection.

(4) Nothing in this Code section shall be construed to repeal any other provision of this Code section or this chapter.

(5) This subsection shall be automatically repealed on July 1, 2015. (Code 1981, § 20-2-167, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1988, p. 1412, § 1; Ga. L. 1989, p. 690, § 1; Ga. L. 1990, p. 847, § 2; Ga. L. 1990, p. 1972, § 3; Ga. L. 1991, p. 1531, § 4; Ga. L. 1991, Ex. Sess., p. 86, § 2; Ga. L. 1992, p. 6, § 20; Ga. L. 1994, p. 1315, § 2; Ga. L. 1995, p. 1302, § 14; Ga. L. 1998, p. 1520, § 3; Ga. L. 2000, p. 618, § 25; Ga. L. 2001, p. 4, § 20; Ga. L. 2001, p. 148, § 7; Ga. L. 2005, p. 60, § 20/HB 95; Ga. L. 2005, p. 798, § 2/SB 35; Ga. L. 2009, p. 8, § 20/SB 46; Ga. L. 2010, p. 158, § 1/HB 908; Ga. L. 2011, p. 647, § 3/HB 192; Ga. L. 2011, p. 752, § 20/HB 142; Ga. L. 2012, p. 355, § 1/SB 404.)

**The 2010 amendment,** effective May 20, 2010, added subsection (f).

**The 2011 amendments.** — The first 2011 amendment, substituted “2011-2012, 2012-2013, 2013-2014, and 2014-2015” for “2011-2012, and 2012-2013” in paragraph (f)(1); substituted “so long as” for “as long as” in paragraph (f)(3); and substituted “July 1, 2015” for “July 1, 2013” in paragraph (f)(5). The second 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted “so long as” for “as long as” in paragraph (f)(3).

**The 2012 amendment,** effective July 1, 2012, added the present fifth and sixth sentences to paragraph (a)(3).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1987, in subsection (a), “full-time equivalent” was substituted for “FTE” in the sixth sentence of paragraph (a)(3) and “Quality Basic Education Formula” was substituted for “Quality Basic Education formula” at the beginning of the last sentence in paragraphs (a)(1) and (a)(3).

Pursuant to Code Section 28-9-5, in 2005, a comma was inserted following “2005” in subsection (e).

**Editor’s notes.** — Ga. L. 1991, p. 1531, § 7, effective July 1, 1991, not codified by the General Assembly, provides: “Section 2 and subsection (b) of Section 6 of an Act

approved April 4, 1990 (Ga. L. 1990, p. 847), relating to the ‘Quality Basic Education Act,’ are repealed.”

Pursuant to its own terms, former subsection (e), as added by Ga. L. 1991, Ex. Sess., p. 86, § 2, relating to a relaxation of the 90 percent encumbrance requirement for the fiscal year beginning July 1, 1991, was repealed effective June 30, 1992.

Ga. L. 1991, Ex. Sess., p. 86, § 1, not codified by the General Assembly, provides that, as a result of the fiscal year 1992 budgetary crisis necessitating reductions in appropriations to all departments, and for fiscal year 1992 only, the state recognizes that local school systems may need greater flexibility in terms of expenditures for direct instructional costs by program, media center costs, and staff development costs, such that “for and only for fiscal year 1992, relaxation of the 90 percent expenditure controls required by the ‘Quality Basic Education Act,’ specifically subsection (a) of Code Section 20-2-167, will not, under this limited time framework and under these extraordinary circumstances, adversely impact upon the state’s objectives and goals specified by the ‘Quality Basic Education Act.’”

Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

**Law reviews.** — For survey article on 2002 through May 31, 2003, see 55 Mercer education law for the period from June 1, L. Rev. 237 (2003).

### JUDICIAL DECISIONS

**Sanction too harsh.** — Even if it were assumed that the “undesignated capital outlay” account was a capital accumulation account requiring identification and specification of future expenditures, rather than a reserve fund to cover unanticipated expenditures and revenue short-

falls, issuance of a permanent injunction enjoining the closure and consolidation of the system’s schools was too harsh a sanction to impose for the purported violation. *Powell v. Studstill*, 264 Ga. 109, 441 S.E.2d 52 (1994).

#### **20-2-167.1. Application of Code Section 20-2-167 for 2003-2004, 2004-2005, and 2005-2006 school years.**

Repealed by Ga. L. 2005, p. 798, § 3/SB 35, effective July 1, 2005.

**Editor’s notes.** — This Code section 2004, p. 107, § 4; Ga. L. 2005, p. 798, was based on Code 1981, § 20-2-167.1, § 3/SB 35. enacted by Ga. L. 2003, p. 185, § 2; Ga. L.

#### **20-2-168. Distribution of federal funds; combined purchase of supplies and equipment; minimum school year; summer school programs; year-round operation.**

(a) All federal funds received by the State Board of Education for purposes contained within this article shall be apportioned and distributed by the state board in a manner consistent with this article as additional aid to local units of administration in defraying the cost of establishing and operating approved programs subject to such rules and regulations as may be prescribed by the state board and in accordance with the approved state plan for such programs, where applicable.

(b)(1) The State Board of Education, through a study which includes consultation with the Department of Administrative Services, representatives of local units of administration, and such others as the state board may consult, shall determine whether an overall substantial price advantage to local units of administration may be obtained by means of a combined bid by local units through the state board and the Department of Administrative Services on standard items of school equipment, supplies, services, or other expenses designated by the state board which are ordinarily needed, procured, or incurred by local units, without a sacrifice of safety or quality. The study used to make such determination shall be performed not less than once every five years. If the state board shall determine that such a price advantage to local units may be obtained by such means on any one or more of such items or expenses, the state board shall, after consultation with such persons, establish sets of uniform standard



specifications for such item or items as may reasonably be required in order to meet the various needs and requirements of the several local units of administration. Local units of administration shall, at such times as the state board shall prescribe, report the probable annual requirement of the local unit for such standard items to the state board and the requested time for future delivery of such items. The state board shall compile such requirements and submit a compilation of them to the Department of Administrative Services, together with such other information as may be needed or otherwise requested by the Department of Administrative Services for the purpose of advertising for bids for a uniform state price on such items.

(2) The Department of Administrative Services shall advertise for bids for supply of such items in the same manner followed for state purchases; provided, however, that it shall inform prospective bidders that the bid requested is for the furnishing of such items to the designated local units of administration at the times specified on the basis of a single state price applicable to all local units, that payment for such items as may be purchased by local units shall be made by the respective local units to the bidder, that no guarantee is made that any purchases will be made from the successful bidder as a result of such bidding, and such other information as shall be appropriate under the circumstances. The Department of Administrative Services shall, upon receipt of bids, process them in the same manner followed for state purchases and promptly notify the state board of the name of the successful bidder and such other available information as may be required by the state board, which shall promptly forward such information to all local units of administration.

(3) Local units of administration may obtain competitive bids from vendors on such standard items of school equipment, supplies, services, or other expenses based upon uniform specifications established for such items by the state board and may purchase such items from the vendor submitting the best bid to the local unit, whether or not the bid price of such vendor is greater or less than the state bid price on such items; provided, however, that whenever a local unit purchases such standard items at a price in excess of the state bid price for such items, the state board shall, when computing standard costs for allotment of state funds, disallow the excess costs paid for such items by the local unit; provided, further, that local units of administration shall implement textbook adoptions from textbook listings prescribed by the state board pursuant to Article 19 of this chapter within 18 months of the time said textbook listings are provided by the state board. The state board shall prescribe regulations necessary for implementation and enforcement of this subsection and is authorized to establish standards and uniform standard



specifications and procedures for the purchase, distribution, use, and maintenance, as the case may be, of school equipment, supplies, services, and other expenses, as may be designated by the state board, whether or not state bid prices are obtained on such items.

(c)(1) Except as otherwise provided in this Code section, public elementary and secondary schools of this state receiving state aid under this article may provide each eligible student with access to no less than 180 school days of education each fiscal year, or the equivalent thereof as determined in accordance with State Board of Education guidelines. The State Board of Education shall define a school year, which shall be no less than 180 days of instruction in accordance with the provisions of this subsection, or the equivalent thereof; shall define the length of the school day, based on a 180 day school year, and equivalent lengths; and shall provide that all public elementary and secondary schools, beginning in the 2010-2011 school year, may be closed for instruction on November 11 of each year to enable students, teachers, and administrators to participate in Veterans Day programs to honor veterans of the armed forces.

(2) Any provision of this subsection or this article to the contrary notwithstanding, when the President of the United States proclaims a national emergency or when the Governor proclaims a state of emergency or when, because of emergency, disaster, act of God, civil disturbance, or a shortage of vital and critical material, supplies, or fuel, the continued operation of the public schools according to the definitions of school year, school month, or school day is impractical or impossible, then the state board shall have the power to authorize local boards of education to depart from a strict interpretation of these definitions, and such departure need not be uniform throughout the state.

(3) A local board of education may, without the necessity of authorization from the state board, elect not to complete, as make-up days, up to four additional days otherwise needed which are the result of days when school was closed due to emergency, disaster, act of God, civil disturbance, or shortage of vital or critical material, supplies, or fuel. In any such case, the school year applicable to that local board of education may terminate, in the discretion of the local board, at the end of the last school day originally designated by the local board as the end of the school year, regardless of the day of the week on which the school calendar was scheduled to end. The provisions of this paragraph shall not limit the authority of the state board under paragraph (2) of this subsection.

(4) Each fiscal year shall begin on July 1 and end on June 30 of the following year.

(5) For purposes of this subsection, the term:

(A) "Disaster" means any happening that causes great harm or damage.

(B) "Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

(d) The governing board of any local unit of administration may provide for continued operation of one or more educational programs of the local unit for a period of time beyond the normal school year provided for in subsection (c) of this Code section for the purpose of providing summer school education programs, including: the continuation of one or more instructional programs provided for in Part 3 of this article, enrichment of prescribed school programs, accelerated school programs, special programs of education enumerated by or coming within the scope of this article, and such other education programs as may be approved by the State Board of Education. All summer school programs shall meet and be offered in accordance with standards, requirements, and criteria prescribed by the state board. Teachers and other certificated professional personnel employed full time or part time during such period shall be paid additional salaries based on the state minimum monthly salary schedule in proportion to the time and services rendered by such personnel. No additional state funds shall be allotted to local units in support of such programs unless the General Assembly authorizes funds for this purpose. The state board is authorized to allot such state funds to local units in support of all or any one or more of such summer school education programs. The extent to which these state funds may be allotted to local units of administration in support of any one or more of such programs shall be determined by the state board but shall not in any event exceed the ratio of state funds to local funds made available to the local unit during the preceding school year in support of the calculated cost of providing the Quality Basic Education Program in the local unit during that school year. The state board is authorized to determine the relative need for establishment of any one or more of the various summer school education programs enumerated in this subsection, to establish priorities for implementation of such programs, and to allot funds appropriated for this purpose to local units of administration in support of those programs.

(e)(1) It is declared to be the policy of this state that every effort be made to utilize currently available educational facilities and equipment on a year-round basis. The State Board of Education shall certify that a local school system has a year-round operation for one or more grade levels for any instructional program as provided in Part 3 of this article which meets the following criteria:

(A) That the operation of the program is for 232 official attendance days or more, constituting four quarters or any plan for year-round operation approved by the state board;

(B) That for a student's first 176 or more days, constituting three quarters or an equivalent plan approved by the state board, attendance shall be on a tuition-free basis; and

(C) That the program is offered for all official attendance days in accordance with such standards, requirements, and criteria as may be prescribed by the state board.

(2) For all instructional programs of a local school system approved by the state board for year-round operation pursuant to paragraph (1) of this subsection, whether the year-round operation is approved system wide or for only a portion of the local school system, the state board shall make the following modifications concerning the calculation of the full-time equivalent counts used in the allotment provisions under this article, specifically the provisions of Code Sections 20-2-161, 20-2-162, and 20-2-165:

(A) The state board shall require a full-time equivalent count to be done each year for the instructional programs approved for year-round operation between June 15 and August 15 in a manner and on a date specified by the state board; provided, however, that such counts shall be done in a manner consistent with the provisions of Code Section 20-2-160;

(B) The state board shall average the summer full-time equivalent count with the other full-time equivalent counts for the instructional programs approved for year-round operation that are specified in the appropriate allotment provisions of this article; and

(C) The state board shall multiply the averages which result from subparagraph (B) of this paragraph by one and one-third and use this full-time equivalent count in all allotment calculations for these instructional programs.

A similar process shall be applied to all other instructional programs approved by the state board for year-round operation which are required by this article or by state board policy to use student counts in determining the allotment of funds to local school systems.

(3) The state board shall have the authority to prescribe requirements and standards for the distribution, use, and expenditure of funds allotted under this subsection. (Code 1981, § 20-2-168, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1988, p. 9, § 1; Ga. L. 1990, p. 1269, § 1; Ga. L. 1992, p. 6, § 20; Ga. L. 1994, p. 1315, § 3; Ga. L. 1996, p. 6, § 20; Ga. L. 2000, p. 792, § 2; Ga. L. 2008, p. 521, § 1/HB 1300; Ga. L. 2009, p. 8, § 20/SB 46; Ga. L. 2009, p. 638, § 2/HB 193; Ga. L. 2012, p. 358, § 8/HB 706.)

**The 2012 amendment**, effective July 1, 2012, deleted former subsection (f), which read: "(f) Each local board of education shall annually provide for a 'Sum-



mer Opportunity Program,' to extend educational opportunities beyond the normal school year provided for in subsection (c) of this Code section. This program will be made available to students who have been retained in grades kindergarten through eight or who have failed academic subjects in these grades. This program shall be offered during the summer months for not less than six weeks at no tuition cost to eligible students. The Summer Opportunity Program may provide for lower teacher-pupil ratios, coordination with family connection resources where appropriate, school locations for the program nearest residential areas of the majority of students eligible to attend the program, transportation, instruction in subject areas failed by students, utilization of instructional technology, and include teachers who have demonstrated teaching success and rapport with students. Each local board shall submit a projected number of students eligible for the Summer Opportunity Program by grade to the Department of Education no later than November 30 of each year in order to have calculated the state cost to operate the Summer Opportunity Program for inclusion as a separate funding item in the midterm adjustment for the current fiscal year. The allocation of state funds to each local school system for such program shall be based upon the actual enrollment in the Summer Opportunity Program of eligible students in such system. The cost calculations and allocations shall be based upon the length of the Summer Opportunity Program and appropriate program weights for programs in

paragraphs (1) through (4) of subsection (b) of Code Section 20-2-161 multiplied times the base weight amount as established in the General Appropriations Act for the most recent fiscal year adjusted for training and experience of teachers as specified in subsection (e) of Code Section 20-2-161 multiplied times the total full-time equivalency program count within each appropriate program which includes funds sufficient to provide for teacher salaries, instructional materials, and facilities maintenance and operations costs. Pupil transportation costs shall be calculated and allocated at one-sixth the annual costs for each bus operated for the Summer Opportunity Program, excluding costs for items paid in the initial allotment for each earned bus such as bus replacement and bus insurance costs. The State Board of Education is encouraged to coordinate with the board of regents to identify student teaching programs in appropriate university system institutions for the purpose of assigning student teachers to as many classes within each school system's Summer Opportunity Program as possible. This subsection in no way prohibits local boards of education from entering into a multisystem summer program contract to provide services identified in this subsection. Local boards are encouraged to expand the Summer Opportunity Program through the use of local funds, tuition, grants, scholarships, Chapter I, and all other available funds to provide summer educational opportunities for all other students in the school system."

**Cross references.** — Public and legal holidays, § 1-4-1.

## JUDICIAL DECISIONS

### ANALYSIS

GENERAL CONSIDERATION  
SUMMER SCHOOL

#### General Consideration

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1551(72) and Ga. L. 1974, pp. 1045 and 1089, which were subsequently repealed but were succeeded by provisions in this Code section,

are included in the annotations for this Code section.

**When scholastic year coincident with calendar year, school tax not levied in year election held.** — Scholastic year being coincident with the calendar year, an election held on November

10, 1927, authorizing the levy of a tax for a local school district, did not authorize the assessment and levy of a school tax in the year 1927 and the issuance of an execution therefor. *Woods v. Miller*, 168 Ga. 259, 147 S.E. 74 (1929) (decided under former Code 1910, § 1551(72)).

**Contracts not rendered void by fact county board disregarded section.** — Fact that a county board of education has adopted a school year in disregard of this section will not have the effect of rendering contracts null and void. *McKenzie v. Board of Educ.*, 158 Ga. 892, 124 S.E. 721 (1924) (decided under former Code 1910, § 1551(72)).

### Summer School

**Summer school not considered part of "adequate education" guaranteed by Constitution.** — If the legislature had intended that summer school be considered part of the "adequate education"

guaranteed by the Constitution, the operation of summer quarter sessions would have been mandatory rather than discretionary. *Crim v. McWhorter*, 242 Ga. 863, 252 S.E.2d 421 (1979) (decided under Ga. L. 1974, pp. 1045 and 1089). For comment, see 31 *Mercer L. Rev.* 341 (1979).

**Summer school sessions are not historically or logically included in free system of common schools** mandated by the Constitution and statutes of this state. *Crim v. McWhorter*, 242 Ga. 863, 252 S.E.2d 421 (1979) (decided under Ga. L. 1974, pp. 1045 and 1089). For comment, see 31 *Mercer L. Rev.* 341 (1979).

**School could not be compelled to operate a summer school session** since summer school is neither required nor supported by direct state funding. *Crim v. McWhorter*, 242 Ga. 863, 252 S.E.2d 421 (1979) (decided under Ga. L. 1974, pp. 1045 and 1089). For comment, see 31 *Mercer L. Rev.* 341 (1979).

## OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the statutory provisions, opinions under former Ga. L. 1974, pp. 1074 and 1089, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Section not violated by school year alternating attendance with vacation.** — Continuous school year program under which pupils alternately attend school for 60 days and are on vacation for 20 days is not violative of state law. 1971 Op. Att'y Gen. No. 71-87 (decided under Ga. L. 1974, pp. 1045 and 1089).

**Length of "school day" relates to length of day during which students actually taught.** — Reference to the length of a "school day" relates to the length of the day during which students are actually being taught and not to the

traditional duties required of teachers above and beyond actual classroom teaching. 1975 Op. Att'y Gen. No. U75-69 (decided under Ga. L. 1974, pp. 1045 and 1089).

**Variances granted regarding length of school day or year need not be uniform throughout state.** — Variances which the State Board of Education grants to local school systems regarding the length of the school day need not be uniform throughout the state, and the board can grant such a variance to a particular local school system with respect to the length of that school system's school day without deducting a portion of the state fiscal assistance to which that system would otherwise be entitled. 1977 Op. Att'y Gen. No. 77-69 (decided under Ga. L. 1974, pp. 1045 and 1089).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 357 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 1066.

**20-2-169. Receipt of federal funds for career, occupational, or technical education.**

The Department of Education is designated as the sole state agency to receive federal funds allotted to Georgia under acts of Congress appropriating federal funds for career, occupational, or technical education; provided, however, those funds appropriated for the operation and management of postsecondary technical, adult, and industrial programs shall be placed under the jurisdiction and control of the State Board of the Technical College System of Georgia; provided, further, a proportionate share of those federal funds appropriated for planning, evaluation, program improvement, and other administrative and discretionary purposes shall be placed under the jurisdiction and control of such board. (Code 1981, § 20-2-169, enacted by Ga. L. 1988, p. 1252, § 4; Ga. L. 2011, p. 632, § 3/HB 49.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “State Board of Technical and Adult Education” in this Code section.

**Cross references.** — Receipt of federal funds for career, occupational, or technical education, § 20-4-17.

**20-2-170. Authority to withhold payment of bonded indebtedness from appropriation.**

If the State Board of Education has received the notification from any local school system or district described in Code Section 20-2-480 and if at any time the State Board of Education is notified by the sinking fund custodian, trustee, or paying agent for bonded indebtedness of such school district or system that the school district or system has failed to effect the punctual payment of the principal of or interest on such indebtedness, the State Board of Education is authorized to and shall withhold from any state appropriation to which such school district or system may be entitled and apply so much thereof as shall be necessary to the payment of the principal of and interest on such indebtedness then due. (Code 1981, § 20-2-170, enacted by Ga. L. 1991, p. 1579, § 1.)

**20-2-171. Minimum direct classroom expenditures; waivers; sanctions for noncompliance; submission of budget and expenditure information; rules and regulations.**

(a) For purposes of this Code section, the term:

(1) “Direct classroom expenditures” means all expenditures by a local school system during a fiscal year for activities directly associated with the interaction between teachers and students, including, but not limited to, salaries and benefits for teachers and paraprofessionals; costs for instructional materials and supplies; costs associ-



ated with classroom related activities, such as field trips, physical education, music, and arts; and tuition paid to out-of-state school districts and private institutions for special needs students. This term shall not include costs for administration, plant operations and maintenance, food services, transportation, instructional support including media centers, teacher training, and student support such as nurses and guidance counselors.

(2) "Total operating expenditures" means all operating expenditures by a local school system during a fiscal year, including expenditures from federal, state, and local funds and from any other funds received by a local school system, such as student activity fees. This term shall not include capital outlay expenditures, debt or bond payments, interest on debt or bonds, facility leases, or rental payments. This term shall also not include any costs which are incurred by a local school system to comply with any mandate by statute or by the Georgia Department of Education effective on or after January 1, 2006, to add specific nonclassroom staff positions.

(b) Beginning with fiscal year 2008:

(1) Each local school system shall spend a minimum of 65 percent of its total operating expenditures on direct classroom expenditures, except as otherwise provided in this subsection;

(2) For any fiscal year in which a local school system has direct classroom expenditures that are less than 65 percent of its total operating expenditures, the local school system shall be required to increase its direct classroom expenditures by a minimum of 2 percent per fiscal year as a percentage of total operating expenditures, beginning in the subsequent fiscal year and each fiscal year thereafter, until it reaches 65 percent. For fiscal year 2008, the baseline year from which the required increase will be determined shall be based on expenditure data from fiscal year 2007;

(3) A local school system that has direct classroom expenditures that are less than 65 percent of its total operating expenditures and that is unable to meet the expenditure requirements in paragraph (2) of this subsection may apply to the State Board of Education for a one-year renewable achievement waiver. The waiver request must include evidence that the local school system is exceeding the state averages in academic categories designated by the board, which may include, but not be limited to, criterion-referenced competency tests, the Georgia High School Graduation Test, and the SAT, a plan for obtaining compliance with this Code section, and any other information required at the discretion of the board; and

(4) A local school system that has direct classroom expenditures that are less than 65 percent of its total operating expenditures and

that is unable to meet the expenditure requirements in paragraph (2) of this subsection may apply to the State Board of Education for a one-year renewable hardship waiver. Waivers granted pursuant to this paragraph shall be limited to extreme situations in which such situation is solely responsible for the local school system's inability to meet the expenditure requirements. Such situations may include, but are not limited to, acts of God and inordinate unexpected increases in energy and fuel costs. The waiver request must include revenue and expenditure reports and specific details providing compelling evidence as to the impact that the intervening extreme situation had on the local school system's ability to comply with expenditure requirements and any other information required at the discretion of the board.

(c) The State Board of Education shall have the authority to impose sanctions against a local school system that fails to comply with the provisions of this Code section or any rules and regulations promulgated pursuant to subsection (e) of this Code section. Such sanctions shall be at the discretion of the board and may include, but not be limited to, requiring the local school system to devise and implement a plan to meet the expenditure requirements of this Code section in the subsequent fiscal year or withholding all or any portion of state funds in accordance with Code Section 20-2-243.

(d) The State Board of Education shall be authorized to require the submission of budget information and expenditure data from local school systems for the purposes of verifying compliance with this Code section.

(e) The State Board of Education shall be authorized to promulgate rules and regulations to implement the provisions of this Code section. (Code 1981, § 20-2-171, enacted by Ga. L. 2006, p. 56, § 2/SB 390; Ga. L. 2009, p. 8, § 20/SB 46.)

**Editor's notes.** — Ga. L. 2006, p. 56, § 1/SB 390, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Classrooms First for Georgia Act.'"

**Law reviews.** — For article on 2006 enactment of this Code section, see 23 Ga. St. U. L. Rev. 119 (2006).

## **20-2-172. Expenditure controls for fiscal years 2007 and 2008.**

Repealed by Ga. L. 2006, p. 56, § 2/SB 390, effective July 1, 2008.

**Editor's notes.** — This Code section was based on Code 1981, § 20-2-172, enacted by Ga. L. 2006, p. 56, § 2/SB 390.

PART 5

PROGRAM WEIGHTS AND FUNDING REQUIREMENTS

**20-2-180. Essential educational resources as basis for base amount and program weights.**

The essential educational resources described in this part shall serve as the basis for computing the base amount and program weights used in the Quality Basic Education Formula pursuant to Code Section 20-2-161. Although the essential educational resources described in this part shall serve as guidelines to local school systems as to the manner by which funds allocated pursuant to Code Section 20-2-161 are expended, the local school systems are authorized to expend such funds as deemed appropriate and necessary to provide the most effective educational programs and services needed by enrolled students, except as otherwise limited by the provisions of subsection (a) of Code Section 20-2-167 and other appropriate provisions of this article and by policies, regulations, and standards promulgated by the State Board of Education. (Code 1981, § 20-2-180, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1987, “Quality Basic Education Formula” was substi-

tuted for “Quality Basic Education formula” in the first sentence.

OPINIONS OF THE ATTORNEY GENERAL

**Funding enrichment courses.** — Local school systems may offer driver’s education and other enrichment courses during regular school hours and may utilize state funds for the provision of these courses so long as the requirements of the

Quality Basic Education Act are met, even though the enrichment courses will not count in the calculation of the amount of state funds which a local school system may receive. 1985 Op. Att’y Gen. No. 85-35.

**20-2-181. Calculation of program weights to reflect base school size.**

The calculation of all program weights shall reflect a base size local school system of 3,300 full-time equivalent students. The calculation of program weights for the kindergarten program, the kindergarten early intervention program, the primary grades (1-3) early intervention program, the primary grades (1-3) program, the upper elementary grades (4-5) early intervention program, and the upper elementary grades (4-5) program shall reflect a base school size of 450 full-time equivalent students. The calculation of program weights for the middle grades (6-8) program, the middle school (6-8) program, the special education programs, the remedial education program, and the English for speakers of other languages program shall reflect a base school size



of 624 full-time equivalent students. The calculation of the program weights for the high school general education program and the high school vocational laboratory program shall reflect a base school size of 970 full-time equivalent students. The calculation of program weights for the alternative education program shall reflect a base school size of 100 full-time equivalent students, except that the calculations for secretaries and media personnel shall reflect a base school size of 624 full-time equivalent students. (Code 1981, § 20-2-181, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1990, p. 847, § 3; Ga. L. 2000, p. 618, § 26; Ga. L. 2001, p. 148, § 8.)

**Editor's notes.** — Ga. L. 2000, p. 618, may be cited as the 'A Plus Education § 1, not codified by the General Assembly, Reform Act of 2000'." provides: "This Act shall be known and

**20-2-182. Program weights to reflect funds for payment of salaries and benefits; maximum class size; reporting requirements; application to specific school years.**

(a) The program weights, when multiplied by the base amount, shall reflect sufficient funds to pay at least the beginning salaries of all teachers needed to provide essential classroom instruction in order to ensure a Quality Basic Education Program for all enrolled students, subject to appropriation by the General Assembly.

(b) The program weights for the primary, primary grades early intervention, upper elementary, upper elementary grades early intervention, middle grades, and middle school programs, when multiplied by the base amount, shall reflect sufficient funds to pay at least the beginning salaries of specialists qualified to teach art, music, foreign language, and physical education, subject to appropriation by the General Assembly.

(c) The program weights for the kindergarten, kindergarten early intervention, primary, primary grades early intervention, upper elementary, upper elementary grades early intervention, middle grades, middle school, and alternative education programs and the program weights for the high school programs authorized pursuant to paragraph (4) of subsection (b) of Code Section 20-2-151, when multiplied by the base amount, shall reflect sufficient funds to pay the beginning salaries for guidance counselors needed to provide essential guidance services to students and whose duties and responsibilities shall be established by the state board to require a minimum of five of the six full-time equivalent program count segments of the counselor's time to be spent counseling or advising students or parents.

(c.1) The program weights for the kindergarten and the kindergarten early intervention programs, when multiplied by the base amount, shall reflect sufficient funds to pay the salaries for instructional aides.

(d) All program weights, when multiplied by the base amount, shall reflect sufficient funds to pay the beginning salaries for technology specialists needed to provide essential technology services.

(e) The program weights for the high school programs authorized pursuant to paragraph (4) of subsection (b) of Code Section 20-2-151, when multiplied by the base amount, shall reflect sufficient funds to provide teachers with a preparation period free of assigned students.

(f) Reserved.

(g) All program weights, when multiplied by the base amount, shall reflect sufficient funds to pay the cost of sick and personal leave for teachers, the employer's portion of costs for membership in the Teachers Retirement System of Georgia and health insurance programs authorized by law, the cost of essential instructional materials and equipment needed to operate effectively such instructional programs, and the cost of travel required of personnel in order to deliver educational services to enrolled students, subject to appropriation by the General Assembly.

(h) All program weights, when multiplied by the base amount, shall reflect, whenever they are revised pursuant to subsection (f) of Code Section 20-2-161, an amount of funds for the purpose of providing staff and professional development to certificated and classified personnel and local school board members which shall be at least equivalent to 1.0 percent of salaries of all certificated professional personnel used in the development of each respective program weight, subject to appropriation by the General Assembly. Beginning in Fiscal Year 2014, such amount shall include funding for school level administrators in the same manner as for other certificated professional personnel. Beginning in Fiscal Year 2015, such amount shall be at least equivalent to 0.9 percent of salaries of all certificated professional personnel, including school level administrators, used in the development of each respective program weight, subject to appropriation by the General Assembly. Funds used for professional or staff development purposes may be used throughout the fiscal year, including days when students are not present at school, to meet professional or staff development needs in the order of priority determined by the local board of education within the comprehensive professional and staff development program plan approved by the State Board of Education pursuant to Code Section 20-2-232. Such professional and staff development program plan shall address deficiencies of certificated personnel as identified by evaluations required under Code Section 20-2-210. Further, professional and staff development funds shall be used for activities that enhance the skills of certificated personnel and directly relate to student achievement, as reflected in the revised certification renewal rules established by the Professional Standards Commission pursuant to paragraph (4.1)

of subsection (b) of Code Section 20-2-200 regarding the impact of professional learning on student achievement. Subsequent certificated personnel evaluations shall include an assessment of an employee's professional and staff development activities and their effect on identified deficiencies and student achievement. Funds for professional development purposes may be used for activities occurring at any time during the fiscal year outside of an employee's normal contract hours.

(i)(1) It is the intent of this paragraph to provide a clear expectation to parents and guardians as to the maximum number of students that may be in their child's classroom in kindergarten through eighth grade. Beginning with the 2006-2007 school year, for the following regular education programs, the maximum individual class size for mathematics, science, social studies, and language arts classes shall be:

|   |    |
|---|----|
| (A) Kindergarten program (without full-time aide)   | 18 |
| (B) Kindergarten program (with full-time aide) ...  | 20 |
| (C) Primary grades program (1-3) .....  | 21 |
| (D) Upper elementary grades program (4-5) .....   | 28 |
| (E) Middle grades program (6-8) and middle school<br>program (6-8) as defined in Code Section<br>20-2-290 ..... | 28 |

For school years 2010-2011, 2011-2012, 2012-2013, 2013-2014, and 2014-2015 only, the system average maximum class size for each instructional program covered under this paragraph shall be the same as the maximum individual class size for each such program, and local boards of education shall be considered in compliance with this paragraph so long as the system average maximum class size is not exceeded; provided, however, that if the State Board of Education approves a blanket waiver or variance pursuant to subsection (h) of Code Section 20-2-244, such maximum individual class sizes shall be the system average maximum class sizes for purposes of this paragraph.

(2) The State Board of Education shall adopt for each instructional program authorized pursuant to Part 3 of this article except those programs included in paragraph (1) of this subsection the maximum number of students which may be taught by a teacher in an instructional period. For the remedial education, vocational laboratory, alternative education, and early intervention programs, the State Board of Education shall provide for a system average maximum class size that shall not exceed the funding class size by more than 20 percent, unless specifically authorized by the State Board of Education; provided, however, that the system average maximum



class size for special education, gifted, and English for speakers of other languages classes shall be set by the State Board of Education. For each instructional program covered under this paragraph, the maximum number of students who may be taught by a teacher in an instructional period shall not exceed the system average maximum class size for the program by more than two students; provided, however, that a system average maximum class size which results in a fractional full-time equivalent shall be rounded up to the nearest whole number; provided, however, that this provision shall not apply to general education programs in mathematics, science, social studies, and language arts for grades 9 through 12. Beginning with the 2007-2008 school year, each local board of education shall be allowed to exceed maximum class sizes set by the state board pursuant to this paragraph for general education programs in mathematics, science, social studies, and language arts for grades 9 through 12 and may establish such maximum class sizes that shall not exceed the funding class size by more than 39 percent and shall annually report to the state board and to each school council in its school system such class sizes established.

(3) The maximum individual class size for the kindergarten and primary grades programs is defined as the number of students in a physical classroom. The maximum individual class size for all other purposes shall be defined as the maximum number of students that may be taught by a teacher in a class segment. Maximum class sizes for the programs covered in paragraph (2) of this subsection that result in a fractional full-time equivalent shall be rounded up to the nearest whole number as needed.

(4) The number of students taught by a teacher at any time after the first 15 school days of a school year may not exceed the maximum such number unless authorization for a specific larger number is requested of the state board after the first FTE count of a school year as required in subsection (a) of Code Section 20-2-160. The state board may approve said request only in the limited circumstance where educationally justified and where an act of God or other unforeseen event led to the precipitous rise in enrollment within that school system or led to another occurrence which resulted in the local board's inability to comply with this subsection. The state board shall not reduce class sizes without the authorization of the General Assembly if this reduction necessitates added costs for facilities, personnel, and other program needs. Local boards of education may reduce class sizes, build additional facilities, and provide other resources at local cost if such actions are in the best interest of the local school systems' programs as determined by the local boards of education.

(j) In its report of the initial full-time equivalent program count required by subsection (a) of Code Section 20-2-160, each local school system shall report to the Department of Education the number of students in each class in each school as of the date of the initial enrollment count; for schools where students change classes during the school day, the local school system shall report the number of students in each class period. Each local school system shall also report to the Department of Education by March 15 of each school year the number of students in each class in each school as of the first Monday in March; for schools where students change classes during the school day, the local school system shall report the number of students in each class period. (Code 1981, § 20-2-182, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1988, p. 612, § 8; Ga. L. 1988, p. 1412, § 2; Ga. L. 1988, p. 1496, § 1; Ga. L. 1990, p. 847, § 4; Ga. L. 1990, p. 918, § 1; Ga. L. 1991, p. 94, § 20; Ga. L. 1991, p. 1531, § 5; Ga. L. 1994, p. 1315, § 4; Ga. L. 2000, p. 618, § 27; Ga. L. 2001, p. 148, § 9; Ga. L. 2003, p. 185, § 4; Ga. L. 2004, p. 107, § 5; Ga. L. 2005, p. 60, § 20/HB 95; Ga. L. 2005, p. 798, § 4/SB 35; Ga. L. 2006, p. 66, § 2/HB 1358; Ga. L. 2007, p. 674, § 2/SB 123; Ga. L. 2009, p. 8, § 20/SB 46; Ga. L. 2010, p. 158, § 3/HB 908; Ga. L. 2011, p. 647, § 4/HB 192; Ga. L. 2011, p. 752, § 20/HB 142; Ga. L. 2012, p. 355, § 2/SB 404.)

**The 2010 amendment**, effective May 20, 2010, added the ending undesignated paragraph in paragraph (i)(1); and deleted the former last two sentences at the end of paragraph (i)(2).

**The 2011 amendments.** — The first 2011 amendment, effective May 13, 2011, in the concluding language of paragraph (i)(1), substituted “2011-2012, 2012-2013, 2013-2014, and 2014-2015” for “2011-2012, and 2012-2013”, and substituted “so long as” for “as long as”. The second 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted “so long as” for “as long as” in the concluding language of paragraph (i)(1).

**The 2012 amendment**, effective July 1, 2012, in subsection (h), substituted “1.0 percent” for “1.5 percent” in the first sentence, added the second and third sentences, and in the sixth sentence, substituted “Further, professional” for “Where possible, professional” at the beginning, and added “, as reflected in the revised certification renewal rules established by the Professional Standards Commission pursuant to paragraph (4.1) of subsection

(b) of Code Section 20-2-200 regarding the impact of professional learning on student achievement” at the end.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2000, a comma was deleted following “alternative education” in the first sentence of subsection (c) and an extra comma was deleted following “teachers,” near the middle of subsection (g).

**Editor’s notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

Ga. L. 2006, p. 66, § 1/HB 1358, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Truth in Class Size Act’.”

Former subsection (k) was repealed on its own terms effective July 1, 2007.

**Law reviews.** — For survey article on education law for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 237 (2003).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U. L. Rev. 147 (2003).



### OPINIONS OF THE ATTORNEY GENERAL

**Sick leave.** — State law entitlement to payments for unused sick leave is limited to teachers and does not include administrative and other personnel in view of the reference in O.C.G.A. § 20-2-850(c) to subsection (f) (now subsection (g)) of O.C.G.A. § 20-2-182, which applies only to “teachers.” 1989 Op. Att’y Gen. No. 89-21.

Neither the State Board of Education nor the local boards of education are obligated to make payments to teachers for

unused sick leave if the General Assembly fails to appropriate adequate funds to make such payments. 1989 Op. Att’y Gen. No. 89-21.

Local boards of education are not prohibited from adopting policies providing for payments for unused sick leave so long as the cost of implementing and maintaining such policies is paid entirely from local, as opposed to state, funds. 1989 Op. Att’y Gen. No. 89-21.

#### **20-2-183. Program weights to reflect funds for maintenance and operation of facilities.**

All program weights, when multiplied by the base amount, shall reflect sufficient funds to provide for the maintenance and operation of facilities essential for housing instructional programs and essential supportive educational services, subject to appropriation by the General Assembly. (Code 1981, § 20-2-183, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1.)

#### **20-2-184. Program weights to reflect funds for media specialists.**

All program weights, when multiplied by the base amount, shall reflect sufficient funds to pay the beginning salary for at least one media specialist for an appropriate base size school pursuant to Code Section 20-2-181 and to provide media center materials and equipment, including computer hardware and software, as essential to support instructional programs authorized under Part 3 of this article, subject to appropriation by the General Assembly. (Code 1981, § 20-2-184, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1992, p. 1500, § 1.)

#### **20-2-184.1. Funding for additional days of instruction; programs for low-performing students; transportation costs.**

(a) The program weights for the kindergarten, kindergarten early intervention, primary, primary grades early intervention, upper elementary, upper elementary grades early intervention, middle grades, middle school, and remedial programs and the program weights for the high school programs authorized pursuant to paragraph (4) of subsection (b) of Code Section 20-2-151, when multiplied by the base amount,



shall reflect sufficient funds to pay the beginning salaries for instructors needed to provide 20 additional days of instruction for 10 percent of the full-time equivalent count of the respective program. Such funds shall be used for addressing the academic needs of low-performing students with programs including, but not limited to, instructional opportunities for students beyond the regular school day, Saturday classes, intersession classes, and summer school classes. Following the midterm adjustment, the state board shall issue allotment sheets for each local school system. Each local school system shall spend 100 percent of the funds designated for additional days of instruction for such costs at the system level. Up to 15 percent of funds designated for additional days of instruction may be spent for transportation costs incurred for transporting students who are attending the additional classes funded by these designated funds.

(b) (Repealed effective July 2015.) (1) For school years 2010-2011, 2011-2012, 2012-2013, 2013-2014, and 2014-2015 only, the expenditure controls contained in subsection (a) of this Code section relating to additional days of instruction shall be waived and shall not apply to nor be enforceable against a local school system.

(2) Each local school system shall report to the Department of Education its budgets and expenditures of the funds received pursuant to this Code section as a part of its report in October for the FTE count and its report on March 15.

(3) No penalty shall be applied to a local school system for failure to comply with expenditure controls set out in subsection (a) of this Code section, notwithstanding any law to the contrary, so long as such local school system complies with this subsection.

(4) Nothing in this Code section shall be construed to repeal any other provision of this Code section or this chapter.

(5) This subsection shall be automatically repealed on July 1, 2015. (Code 1981, § 20-2-184.1, enacted by Ga. L. 2001, p. 148, § 10; Ga. L. 2003, p. 185, § 5; Ga. L. 2010, p. 158, § 4/HB 908; Ga. L. 2011, p. 647, § 5/HB 192; Ga. L. 2011, p. 752, § 20/HB 142.)

**The 2010 amendment**, effective May 20, 2010, designated the existing provisions as subsection (a) and added subsection (b).

**The 2011 amendments.** — The first 2011 amendment, effective May 13, 2011, substituted “2011-2012, 2012-2013, 2013-2014, and 2014-2015” for “2011-2012, and 2012-2013” in paragraph (b)(1); substituted “so long as” for “as long

as” in paragraph (b)(3); and substituted “July 1, 2015” for “July 1, 2013” in paragraph (b)(5). The second 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted “so long as” for “as long as” in paragraph (b)(3).

**Law reviews.** — For note on the 2003 amendment to this Code section, see 20 Ga. St. U. L. Rev. 147 (2003).

**20-2-185. Program weights to reflect funds for salaries for assistant principals and secretaries.**

All program weights, when multiplied by the base amount, shall reflect sufficient funds to pay the beginning salaries of assistant principals as well as the salaries of secretaries essential for the efficient and effective management of the instructional and supportive educational programs of an appropriate base size school pursuant to Code Section 20-2-181 and to provide for the costs of operating an administrative office in the school, subject to appropriation by the General Assembly. (Code 1981, § 20-2-185, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 2000, p. 618, § 28.)

**Editor's notes.** — Ga. L. 2000, p. 618, may be cited as the 'A Plus Education § 1, not codified by the General Assembly, Reform Act of 2000.'" provides: "This Act shall be known and

**20-2-186. Allocation of funds for local systems to pay beginning salaries of superintendents, secretaries, accountants, nurses, and certain other personnel; eligibility of failing schools for funds.**

(a) Funds provided under this article shall include the following for local systems to pay, on a 12 month basis, the beginning salaries of superintendents, assistant superintendents, and principals and the salaries of secretaries, accountants, and nurses, subject to appropriation by the General Assembly:

(1) Each local system shall earn, for any number of full-time equivalent students equal to or under 5,000, funds sufficient to pay the beginning salaries of a superintendent and two assistant superintendents and the salaries of a secretary and an accountant; and

(2) For numbers of full-time equivalent students over 5,000 and less than 10,001, funds sufficient to pay the beginning salaries of a superintendent and four assistant superintendents and the salaries of a secretary and an accountant; and

(3) For numbers of full-time equivalent students over 10,000, funds sufficient to pay the beginning salaries of a superintendent and eight assistant superintendents and the salaries of a secretary and an accountant; and

(4) Each local system shall earn funds for the 2000-2001 school year sufficient to pay the beginning salary of a principal for each school in the local school system with a principal of record for the preceding year. Thereafter, each local school system shall earn funds sufficient to pay the beginning salary of a principal for each school in the local school system that reported a principal on the October

certified personnel information report; provided, however, that any school which operates as a combination school, which is defined as any of the elementary grades, kindergarten through grade five, contiguous with one or more of the middle grades, grades six through eight; or as a combination school of any of the middle grades, grades six through eight, contiguous with one or more of the elementary grades or contiguous with one or more of the high school grades, grades nine through 12; or as a combination school of any of the high school grades, contiguous with one or more of the middle grades, shall earn funds sufficient to pay the beginning salary of a principal for each of the elementary, middle, or high school combinations. Beginning with the 2001-2002 school year, funds cannot be earned for more than one principal's salary for schools on the same campus sharing facilities unless the schools operate as a combination school as defined in this paragraph with separate facility codes issued by the Department of Education. A local school system shall earn funds in the midterm adjustment sufficient to pay the beginning salary of a principal for a new school, if not otherwise earning the funds, when the school has reported full-time equivalent program counts in the October count, has an approved new school facility code issued by the department, and has reported a principal on the October certified personnel information report under the new facility code. It is further provided that funds for the salary of a principal shall not be earned under this paragraph for an evening school or alternative school; and

(5) Each local system shall earn funding for one nurse for every 750 full-time equivalent students at the elementary school level and one nurse for every 1,500 full-time equivalent students at the middle and high school levels. Such funding shall have a ratio of one registered professional nurse to five licensed practical nurses. Such funding shall be based on a contract length of 180 days and shall be sufficient to pay 50 percent of the average salary and benefits, as determined by the Department of Education, for a registered professional nurse or for a licensed practical nurse; provided, however, that such amount shall be phased in so that, in Fiscal Year 2013, such amount shall be 40 percent and, in Fiscal Year 2014, such amount shall be 45 percent. Local school systems shall not be required to provide any local matching funds for school nurses to receive funds pursuant to this paragraph. Local school systems that do not meet the minimum full-time equivalent student counts set out in this paragraph shall receive a base amount of funding. Each local school system shall expend 100 percent of the funds earned pursuant to this paragraph for salaries and benefits for school nurses.

(b) All program weights, when multiplied by the base amount, shall reflect sufficient funds to pay the beginning salaries of a visiting teacher using a base size of 2,475 full-time equivalent students and for costs of



operating an administrative office for the local school system and for workers' compensation and employment security payments for personnel at the central office, school, and program levels, subject to appropriation by the General Assembly. Further, the program weights for all special education programs pursuant to Code Section 20-2-152, when multiplied by the base amount, shall reflect sufficient funds to pay the beginning salaries of special education leadership personnel essential and necessary for the effective operation of such programs in a base size local school system. Further, the program weights for all programs, when multiplied by the base amount, shall reflect sufficient funds to pay the beginning salaries of school psychologists and psychometrists essential and necessary for the effective operation of such programs in a local school system using a base size of 2,475 full-time equivalent students, subject to appropriation by the General Assembly.

(c) Notwithstanding any provision of this Code section to the contrary, no local system shall earn funds under this Code section, except for funds for nurses, accountants, visiting teachers, school psychologists, and secretaries, if the local board of education has not implemented in a failing school within the system the interventions, as defined in Code Section 20-14-41, that are prescribed by the State Board of Education. (Code 1981, § 20-2-186, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1990, p. 847, § 5; Ga. L. 1993, p. 1667, § 2; Ga. L. 1995, p. 701, § 3; Ga. L. 2000, p. 618, § 29; Ga. L. 2012, p. 372, § 1/SB 403.)

**The 2012 amendment**, effective July 1, 2012, substituted the present provisions of paragraph (a)(5) for the former provisions, which read: "Each local system shall earn funds sufficient to pay for nursing services."

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

**20-2-187. State-wide school lunch program; instruction in nutrition, hygiene, etiquette, and social graces; school food and nutrition personnel.**

(a)(1) The State Board of Education shall annually determine the amount of state funds needed to provide a state-wide school lunch program. The state board shall, by regulation, provide for certifying and classifying school lunch supervisors and managers and establish training programs for school lunch personnel. The state board is authorized to provide for the payment of:

- (A) Operating costs of school lunchrooms, including breakfast costs, as financed by federal funds, for those students eligible under federal guidelines;

(B) State supplements to the salaries paid such personnel by local units of administration; and

(C) State incentive pay for satisfactory completion of such training programs.

(2) An application of local five mill share funds pursuant to Code Section 20-2-164 shall not be made for payments to local units of administration under this Code section. Any state funds appropriated for this purpose shall be used to supplement federal funds as a means of keeping sale prices within reach of paying students and of maximizing participation and quality meals for all students.

(b) The State Board of Education is authorized to prescribe by appropriate rules and regulations that there may be included as part of the program of every public school in this state a course of instruction in nutrition, hygiene, etiquette, and the social graces relating to the partaking of meals and is further authorized to allot funds, in a manner consistent with the funding for the other various components of the instructional program, to local units of administration for costs directly associated with this program. There may be utilized in the course of instruction the full resources available to each individual school, including its cafeterias, school lunch personnel, and all practical demonstrations in the preparation and consumption of food which may be necessary to formulate a comprehensive course of instruction in such subject matter. Any period of the school day may be utilized for the teaching of this course of instruction, including that period usually reserved for the lunch period.

(c)(1) The State Board of Education shall establish a system of allotments of funds to local units of administration to provide for services rendered on a ten-month basis by school food and nutrition personnel. The amount of funds paid to any local unit of administration shall be paid in 12 monthly payments and shall be based upon the number of full-time equivalent school lunch positions needed to plan, prepare, and serve meals in that local unit of administration, multiplied by an annual base payment. For each school food manager, the local unit of administration shall earn the base payment as well as an amount not to exceed \$100.00 per month.

(2) The base payment shall be calculated on the basis of 1,520 hours in an annual school year for a full-time equivalent school lunch position, multiplied by an amount not less than \$161.00 per month for 12 months. Future annual increases in the base payment shall reflect the same percentage increase provided by the state for other state funded positions. The state board shall annually establish a state performance standard and shall determine the number of full-time equivalent school lunch positions needed to plan, prepare,



and serve meals based on the state performance standard and the average daily number of student lunches served during the preceding school year.

(3) Each local unit of administration shall establish a staffing pattern and determine the number of personnel to employ. Local units of administration shall establish the salary schedule for school food and nutrition personnel and shall use the base payments in financing the locally established salary schedule. (Code 1981, § 20-2-187, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 2000, p. 618, § 96; Ga. L. 2009, p. 638, § 3/HB 193.)

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

**Administrative rules and regula-**

**tions.** — School nutrition program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Chapter 160-5-6.

## OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1974, pp. 1045 and 1060 and former Code Sections 20-2-183, 20-2-280, and 20-2-284, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

**State board determines how much of allocated state funds spent for school lunch purposes.** — Proper authority to determine how much of the state funds allocated for school lunch purposes shall be spent is the State Board of Education which, in determining what it believes to be necessary in the way of state fiscal assistance, could presumably take into account the amount of available funds from other areas such as local taxation and federal grants. 1977 Op. Att'y Gen. No. 77-8 (decided under Ga. L. 1974, pp. 1045 and 1060).

**Charges for school meals sold to employees.** — From a viewpoint of state law, since there are no longer any apparent state constitutional restrictions (as opposed to statutory and regulatory authorizations and restraints) respecting charges for school meals, in determining the sum it will charge teachers and other school employees for school meals, a local

school system may properly exclude those indirect costs which the school system would have to bear whether or not the meals were sold to teachers and employees as well as to students; it would be permissible for a local school system to calculate the sum to be charged to the teacher or other employee based upon direct costs only. 1985 Op. Att'y Gen. No. 85-23 (decided under former § 20-2-183).

**School lunches as compensation.** — In the event that it had local funds available to do so, a local school system, since it is empowered to supplement the state minimum salary schedule, could presumably provide school lunches as a part of the school's overall compensation plan for teachers and other school employees. 1985 Op. Att'y Gen. No. 85-23 (decided under former § 20-2-284).

**Board determines restrictions on and conditions appertaining to funds' use.** — Provided that state funds appropriated for the support of school lunch programs of local school systems are not expended for other than school lunch purposes, restrictions on and reasonable conditions appertaining to the use of such funds by local school systems is a matter to be determined by policies, rules, and regulations of the State Board of Education. 1977 Op. Att'y Gen. No. 77-8 (decided under Ga. L. 1974, pp. 1045 and 1060).



**Prohibition on nonnutritious food sales valid.** — State Board of Education policy which prohibits the sale of nonnutritious foods from the beginning of the school day through the end of the last lunch period is valid. 1984 Op. Att'y Gen. No. 84-52. (decided under former § 20-2-280.)

## **20-2-188. Student transportation.**

(a) The amount of funds needed by a local unit of administration to pay expenses of student transportation shall be calculated by the State Board of Education in accordance with a schedule of standard transportation costs to be incurred by local units of administration in the operation of economical and efficient student transportation programs and a schedule of variable transportation costs or variable cost factors dependent upon prevailing circumstances which affect, in varying ways, the cost of student transportation authorized by this Code section; provided, however, that the amount of funds to be actually distributed to any local unit of administration under this Code section during any school year shall not exceed the actual costs incurred by the local unit in transporting students to and from public schools, including costs for transportation for disabled or limited-English-proficient students who must travel across local school system lines or away from the school to which they would normally be assigned if they did not have such special needs. It is further provided that the costs of the regular student transportation program receive full funding before funds are provided for transportation of students to and from places for the purpose of work experiences, training in instructional laboratories outside the assigned schools, and in other such field trips required or integral to the various instructional components of the educational program. In establishing the schedule of standards and variable student transportation costs or cost factors, the state board is, without limiting the generality of the foregoing, authorized to consider factors and circumstances such as the number and density of students transported in the local unit of administration and the areas therein served by school buses; the suitability of school bus routes in the local unit; the suitability of the type and number of buses used by the local unit; the number of miles traveled by school buses in the local unit; minimum bus loads; transportation surveys, cost of transportation equipment, and depreciation schedules; the schedule of minimum salaries for school bus drivers established in accordance with subsection (b) of this Code section; the number of school bus drivers allotted to the local unit; maintenance, repair, and operating costs of transportation equipment; climate and terrain; condition of roads used for the purpose of transporting students in the local unit; cost of liability insurance; cost of safety instruction and training for both bus drivers and students; and such other factors and circumstances as the state board may find relevant for the purpose of establishing such schedules and cost factors. The state board shall have authority to establish minimum require-

ments and standards respecting use of funds allotted under this Code section.

(a.1) Any funds that the State Board of Education allocates for school bus replacement may be used by local boards of education to refurbish existing school buses. Bus replacement funds may not be restricted by the state board for use only in purchasing new or replacement school buses. Any school bus that is refurbished shall be subject to all safety and maintenance inspection requirements provided for by law. Refurbishment of a school bus shall be done by a school bus manufacturer or by a dealer of a manufacturer. Each local board of education that refurbishes a school bus pursuant to this subsection is strongly encouraged to apply for federal funds to retrofit the engine. The State Board of Education shall notify the Environmental Protection Division when a local board of education receives state funds to refurbish a school bus so that the division may provide information to such local board regarding the availability of federal funds for such purposes.

(b) The State Board of Education shall establish a schedule of uniform minimum salaries that shall be paid by local units of administration to drivers of school buses, regardless of type of ownership, which shall be not less than the amount appropriated by the General Assembly each year but not less than \$500.00 per month for 12 months. The minimum salary schedule shall not apply to drivers of cars and other vehicles not designated as school buses. Local units of administration shall not pay to any bus driver in their employment salaries less than those prescribed by the uniform minimum salary schedule but shall have the authority to supplement such salaries. The expense of purchasing, maintaining, and operating such buses, regardless of type of ownership, shall not be considered in establishing the schedule of uniform minimum salaries for school bus drivers. The schedule of uniform minimum salaries shall be used as a standard cost item for the purpose of calculating the expense of student transportation under subsection (a) of this Code section. This subsection shall not apply to student or teacher drivers.

(c) To the extent that the State Board of Education obtains a state-bid price under subsection (b) of Code Section 20-2-168 on any standard item of equipment, supply, or service used or obtained by local units of administration in connection with or as a result of providing transportation services to students attending the public schools of such local units or on any other standard expense incurred by local units, the standard transportation cost or allowance to be attributed to such item or expense under subsection (a) of this Code section shall be based upon an amount not in excess of the state-bid price on such item or expense.

(d) Students who live beyond one and one-half miles from the school to which they are assigned, according to the nearest practical route by



school bus, shall be eligible to be counted as transported students for the purpose of calculating that portion of the expense of student transportation associated with transporting students from home to school and from school to home as authorized under subsection (a) of this Code section, provided such students are actually transported to such school by school bus or other vehicle made available for this purpose by the local unit of administration. Any student who resides within such mileage limitation shall not be eligible to be counted for school transportation state-aid purposes, with the exception of disabled students being transported.

(e) The State Board of Education shall establish and require adherence to minimum specifications for vehicles used or contracted to be used by local units of administration for transporting students, taking into account the factors and circumstances set forth in subsection (a) of this Code section, and shall establish and require adherence to minimum standards and requirements respecting maintenance, repair, inspection, and use of such vehicles and minimum qualifications for the drivers of such vehicles. The state board shall require, monitor, and fund a program of safety instruction in the practices of safe riding and emergency bus evacuation drills for both school bus drivers and students riding school buses.

(f) The State Board of Education shall have the authority to allot funds for the transportation of all public school students residing on Sapelo Island to the mainland of the state for the purpose of attending school on the mainland.

(g) The State Board of Education shall adopt policies, procedures, regulations, and other such requirements for transportation and for payment of all transportation costs pursuant to subsections (a) through (e) of this Code section for all students with special needs identified by the various local units of administration. Further, the state board shall allot funds to local units of administration for transportation costs for those students authorized by such local units of administration to attend schools and programs of other local units.

(h) The State Board of Education shall adopt policies and regulations relative to vehicles used for the transportation of students with special needs.

(i) Notwithstanding the provisions of subsections (a) through (h) of this Code section, funds to pay the expenses of student transportation shall be paid to an independent school system only when requested by the board of education of such independent school system. Any funds for student transportation costs shall be specified by the board of education of the independent school system in its budget prepared pursuant to subsection (c) of Code Section 20-2-167 and, if not budgeted therein, no



expenses for student transportation shall be payable to the independent school system for the fiscal year covered by such budget. No provision of this article shall be construed to require the board of education of any independent school system to furnish student transportation services within such school system.

(j) The amount of funds needed by a local unit of administration during a fiscal year for sick and personal leave expenses of school bus drivers shall be determined by multiplying the number of school buses allotted to a local unit of administration pursuant to this Code section by a sum of money not less than \$75.00. The State Board of Education shall have the authority to prescribe minimum requirements and standards for the distribution, use, and expenditure of funds allotted under this subsection. (Code 1981, § 20-2-188, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1986, p. 880, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1988, p. 321, § 1; Ga. L. 1989, p. 326, § 1; Ga. L. 1995, p. 1302, § 14; Ga. L. 2010, p. 1001, § 1/HB 936.)

**The 2010 amendment**, effective July 1, 2010, added subsection (a.1).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1988, a comma was inserted following “transportation costs or cost factors” near the beginning of the third sentence of subsection (a).

**Editor’s notes.** — Ga. L. 1989, p. 326, § 2 provided that the 1989 amendment (substituting “\$500.00” for “\$422.38” near the end of the first sentence in subsection (b)) was not effective until funds were appropriated for that purpose. Such funds were appropriated in 1996.

**Administrative rules and regulations.** — Student transportation management, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Chapter 160-5-3.

**Law reviews.** — For survey article on education law for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 237 (2003). For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004).

### JUDICIAL DECISIONS

**State transportation assistance.** — State Board of Education’s obligation to include students outside of a school area in calculating transportation funds given to the district depended on an interpretation of “school to which they are assigned” in O.C.G.A. § 20-2-188(d). The Board’s interpretation, providing funds based on the distance students lived from schools in their attendance zone, regardless of the schools actually attended, was reasonable

as it comported with legislative intent and used an objective, uniformly applicable standard to define a student’s assigned school. The State Board did not have to interpret this phrase to mean the school a student actually attended. The district had no clear legal right to the funds the district sought, nor did the district show a gross abuse of discretion by state officials. *Schrenko v. DeKalb County Sch. Dist.*, 276 Ga. 786, 582 S.E.2d 109 (2003).

### OPINIONS OF THE ATTORNEY GENERAL

**Editor’s notes.** — In light of the similarity of the statutory provisions, opinions under former Ga. L. 1974, pp. 1045, 1061,

1461, and 1462 and former Code Section 20-2-187, which were subsequently repealed but were succeeded by provisions

in this Code section, are included in the annotations for this Code section.

**Board's regulatory authority over pupil transportation neither controls nor conflicts with statutory equipment standards.** — State Board of Education has been given certain regulatory authority regarding minimum standards, specifications, and procedures for vehicles used for the transportation of pupils including children with special needs as identified by the various local units of administration; however, this authority neither controls nor is in conflict with the specific equipment standards set forth in Ga. L. 1970, p. 586, § 2. 1977 Op. Att'y Gen. No. 77-43 (decided under Ga. L. 1974, pp. 1045, 1061, 1461 and 1462).

**Use of school buses by community groups.** — Local board of education may not allow community organizations or private recreational organizations to use a school bus for purposes other than transporting pupils to and from schools or activities which are an integral part of the educational program, even if the group pays all expenses associated with the use of the bus, except that local boards may allow community organizations or private recreational organizations to use school buses to provide transportation for the elderly and the handicapped if the costs of such transportation is reimbursed in full from funds other than school funds. 1985 Op. Att'y Gen. No. 85-34 (decided under former § 20-2-187).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 278 et seq.

**Am. Jur. Proof of Facts.** — Liability of School Bus Driver or School for Injury

to Child Going to or from School Bus, 13 POF3d 475.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 1030 et seq.

### 20-2-189. Migrant student grants for schools.

(a) As used in this Code section, the term "migrant student" means a child who is a student in a public school and who has, within 12 months prior to first becoming a student in such school, moved across state or school district lines with a migrant parent or guardian to enable the child, the child's parent or guardian, or a member of the child's immediate family to obtain temporary or seasonal employment in an agricultural or fishing activity.

(b) The State Board of Education shall provide grants to qualified local units of administration for the purpose of supplementing services and instruction to currently enrolled migrant students. The State Department of Education by regulation shall establish the manner in which a local unit of administration must demonstrate that any of its schools meets the eligibility requirements of this subsection.

(c) Grants under this Code section shall be subject to appropriation by the General Assembly. The grant amount for a local unit of administration to be used for a school thereof under this Code section shall be determined by multiplying the total appropriation for such grants by a fraction, the numerator of which is the average number of eligible migrant students enrolling in that school after the final FTE count as required in subsection (a) of Code Section 20-2-160 but prior to the end of the same academic year and the denominator of which is the

average total number of eligible migrant students enrolling after the final FTE count as required in subsection (a) of Code Section 20-2-160 but prior to the end of the same academic year in all local units in the entire state. At least 90 percent of the grant funds received by a local unit under this Code section shall be used for direct program expenditures at the school for which the grant is computed under this subsection. Any portion of that 90 percent not so expended shall be returned to the State Department of Education. (Code 1981, § 20-2-189, enacted by Ga. L. 1994, p. 1796, § 1; Ga. L. 1995, p. 10, § 20; Ga. L. 1996, p. 1603, § 1.)

**20-2-190. Professional development centered on state-wide strategic initiatives.**

(a) Subject to appropriations by the General Assembly, the State Board of Education shall provide professional development centered on state-wide strategic initiatives. Such strategic initiatives may include, but are not limited to, training on the new common core curriculum, support for under-performing educators, and mentoring programs in specific subject areas.

(b) It is the intention of the General Assembly that:

(1) For Fiscal Year 2014, an amount equivalent to 0.15 percent of salaries of all certificated professional personnel, including school level administrators, used in the development of each respective program weight be appropriated to the State Board of Education for purposes of funding state-wide strategic initiatives for professional development, as provided in subsection (a) of this Code section; and

(2) For Fiscal Year 2015 and thereafter, an amount equivalent to 0.25 percent of salaries of all certificated professional personnel, including school level administrators, used in the development of each respective program weight be appropriated to the State Board of Education for purposes of funding state-wide strategic initiatives for professional development, as provided in subsection (a) of this Code section. (Code 1981, § 20-2-190, enacted by Ga. L. 2012, p. 355, § 3/SB 404.)

**Effective date.** — This Code section became effective July 1, 2012. Section 20-2-190, as enacted by Ga. L. 2012, p. 372, § 2/SB 403, was redesignated as Code Section 20-2-191.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2012, Code

**20-2-191. Supplies for school health nurse programs.**

Subject to appropriations by the General Assembly, the State Board of Education shall provide grants to local school systems for the purpose of purchasing supplies for school health nurse programs, as required



pursuant to Code Section 20-2-771.2. The grant funds shall be distributed to local school systems on a full-time equivalent basis. The state board shall establish regulations as to the manner in which such grant funds may be used. (Code 1981, § 20-2-191, enacted by Ga. L. 2012, p. 372, § 2/SB 403.)

**Effective date.** — This Code section became effective July 1, 2012.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2012, Code Section 20-2-190, as enacted by Ga. L. 2012, p. 372, § 2/SB 403, was redesignated as Code Section 20-2-191.

**Editor's notes.** — Ga. L. 2012, p. 372, § 2/SB 403, which enacted this Code section, purported to amend Part 5 of Article 5, but actually amended Article 6.

## PART 6

### EMPLOYMENT

#### Subpart 1

#### Certificated Professional Personnel

**Administrative rules and regulations.** — Certification, Official Compilation of the Rules and Regulations of the State of Georgia, Professional Standards Commission, Chapter 505-2.

Educator preparation rules, Official Compilation of the Rules and Regulations of the State of Georgia, Professional Standards Commission, Chapter 505-3.

#### **20-2-200. Regulation of certificated professional personnel by Professional Standards Commission; certification requirement; requirements; in-field assignment standards; effect of unsatisfactory performance evaluations; withdrawal of application; fees.**

(a) The Professional Standards Commission shall provide, by regulation, for certifying and classifying all certificated professional personnel employed in the public schools of this state. No such personnel shall be employed in the public schools of this state unless they hold certificates issued by the commission certifying their qualifications and classification in accordance with such regulations. The commission shall establish such number of classifications of other certificated professional personnel as it may find reasonably necessary or desirable for the operation of the public schools; provided, however, that such classifications shall be based only upon academic, technical, and professional training, experience, and competency of such personnel. The commission is authorized to provide for denying a certificate to an applicant, suspending or revoking a certificate, or otherwise disciplining the holder of a certificate for good cause after an investigation is held and notice and an opportunity for a hearing are provided the

certificate holder or applicant in accordance with subsection (d) of Code Section 20-2-984.5. The commission shall designate and define the various classifications of professional personnel employed in the public schools of this state that shall be required to be certificated under this Code section or under Code Section 20-2-206. Without limiting the generality of the foregoing, the term “certificated professional personnel” is defined as all professional personnel certificated by the commission and county or regional librarians.

(b)(1) The Professional Standards Commission shall establish rules and regulations for appropriate requirements and procedures to ensure high-quality certification standards for all Georgia educators while facilitating the interstate mobility of out-of-state certified educators.

(2) Requirements established for initial certification applicants new to the profession, to include out-of-state program completers with or without certificates and with no teaching experience, may include, but are not limited to, demonstrated satisfactory proficiency in the following: a test of broad general knowledge; a test of specific subject matter content or other professional knowledge appropriate to the applicant’s field of certification; computer skill competency; standards of ethical conduct; and course work in the identification and education of children who have special educational needs; provided, however, that this paragraph shall not be construed to apply to alternative certification requirements as provided in Code Section 20-2-206.

(3) Requirements established for holders of valid, professional out-of-state certificates applying for their first Georgia certificate may include, but are not limited to the following: computer skill competency; course work in the identification and education of children who have special educational needs; recency of study; and standards of ethical conduct. These requirements may be completed during the validity period of the first Georgia certificate. At the time of application for the first Georgia certificate, satisfactory proficiency in subject matter content appropriate to the applicant’s field of certification may be determined based on Professional Standards Commission approved tests or combinations of successful teaching experience and academic, technical, and professional preparation as outlined in rules of the Professional Standards Commission.

(4) Requirements for certification renewal shall be established to foster ongoing professional learning, enhance student achievement, and verify standards of ethical conduct; provided, however, that from July 1, 2010, through July 1, 2015, no professional learning requirements shall be required for certificate renewal for clear renewable certificates for certificated personnel or for certificate renewal for

paraprofessionals. Such requirements may include, but are not limited to, professional learning related to school improvement plans or the applicant's field of certification and background checks. Should the Professional Standards Commission include a requirement to demonstrate computer skill competency, the rules and regulations shall provide that a certificated educator may elect to meet the requirement by receiving satisfactory results on a test in basic computer skill competency. If a certificated educator elects to take such test pursuant to this paragraph, the local school system by which such educator is employed shall make available the opportunity to take the test on site at the school in which the educator is assigned. Each principal shall identify an administrator on site at each school to serve as a proctor for individuals taking the test pursuant to this paragraph. Individuals holding a valid Georgia life certificate or a valid National Board for Professional Teaching Standards certificate shall be deemed to have met state renewal requirements except those related to background checks.

(4.1) Prior to July 1, 2015, the Professional Standards Commission shall revise its certification renewal rules established pursuant to paragraph (4) of this subsection, to require demonstration of the impact of professional learning on educator performance and student learning for purposes of certification renewal. Such revised rules shall be effective beginning July 1, 2015. As part of the revision process, the Professional Standards Commission shall establish a task force to determine the level of evidence necessary for educators to demonstrate the impact of professional learning and how such evidence will be collected and submitted for purposes of certificate renewal.

(5) Requirements designating approved in-field assignment standards appropriate to the applicant's field of certification shall be established to ensure that educators are assigned to those areas for which they are properly prepared. These standards may be determined based on reviews of state approved curriculum courses, state approved preparation programs, and designated certificate fields.

(c) An individual who has received two unsatisfactory annual performance evaluations in the previous five-year period pursuant to Code Section 20-2-210 shall not be entitled to a renewable certificate prior to demonstrating that such performance deficiency has been satisfactorily addressed, but such individual may apply to the commission for a nonrenewable certificate.

(d) No applicant who is under review by the commission shall be allowed to withdraw his or her application for a certificate, permit, or other certification document without the written consent of the commission. The commission shall retain its authority over those appli-



cants to proceed with the denial of the certificate, permit, or other certification document upon any ground provided by law, or to enter an order denying the certificate, permit, or other certification document upon any ground provided by law. The suspension or expiration of any certificate, permit, or certification document, or its surrender without the written consent of the commission, shall not deprive the commission of its authority to do any of the following:

- (1) Institute or continue a disciplinary proceeding against the holder of a certificate, permit, or other certification document upon any ground provided by law;
- (2) Enter an order suspending or revoking the certificate, permit, or other certification document; or
- (3) Issue an admonition to the holder of a certificate, permit, or other certification document.

(e)(1) The Professional Standards Commission shall charge the following fees to persons who file applications with the commission under its regulations adopted pursuant to the authority of this Code section:

|  |          |
|--|----------|
| (A) For an applicant for initial certification who is not currently employed in Georgia public or private schools .....  | \$ 20.00 |
| (B) For an applicant for initial certification who is not a graduate of an accredited education program from a Georgia college or university .....                             | 20.00    |
| (C) For an applicant for a higher certificate when the applicant then holds a Georgia certificate but who is not currently employed in Georgia public or private schools ..... | 20.00    |
| (D) For an applicant for a certificate which adds a field or which endorses a certificate but who is not currently employed in Georgia public or private schools .....         | 20.00    |
| (E) For an applicant for a conditional certificate ..  | 20.00    |
| (F) For an applicant for the renewal of any certificate if the applicant is not currently employed by a public or private school in Georgia .....                              | 20.00    |
| (G) For evaluating transcripts where certificates are not issued and for issuing duplicate copies of certificates .....  | 20.00    |

(H) For an applicant for a clearance certificate pursuant to Code Section 20-2-211.1 who is not currently employed in Georgia public or private schools or who is not a graduate of an accredited education program from a Georgia college or university ..... 20.00

(2) The fees provided for in paragraph (1) of this subsection shall be paid by an applicant by cashier's check, money order, credit card, debit card, or other method as approved by the Professional Standards Commission as a condition for filing the application.

(3) The fees provided for in this subsection shall be paid by the commission into the general funds of the state. The commission shall adopt regulations to carry out the provisions of this subsection.

(f) As used in this part, unless the context indicates otherwise, the term "commission" means the Professional Standards Commission established under Part 10 of Article 17 of this chapter. (Code 1981, § 20-2-200, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1988, p. 1735, § 1; Ga. L. 1989, p. 1806, § 1; Ga. L. 1990, p. 1312, § 1; Ga. L. 1990, p. 1339, § 1; Ga. L. 1990, p. 1487, §§ 1, 2; Ga. L. 1991, p. 94, § 20; Ga. L. 1991, p. 1546, § 4; Ga. L. 1992, p. 2365, § 1; Ga. L. 1994, p. 801, § 1; Ga. L. 2000, p. 521, §§ 1, 2; Ga. L. 2000, p. 618, § 30; Ga. L. 2002, p. 397, § 1; Ga. L. 2003, p. 398, § 1; Ga. L. 2005, p. 60, § 20/HB 95; Ga. L. 2006, p. 534, § 1/HB 972; Ga. L. 2007, p. 259, § 3/SB 72; Ga. L. 2010, p. 237, §§ 1, 1D/HB 1079; Ga. L. 2010, p. 258, § 1/HB 1307; Ga. L. 2011, p. 511, § 1/HB 285.)

**The 2010 amendments.** — The first 2010 amendment, effective July 1, 2010, added subparagraph (e)(1)(H); and substituted "check, money order, credit card, debit card, or other method as approved by the Professional Standards Commission" for "check or money order" in paragraph (e)(2). The second 2010 amendment, effective July 1, 2010, in the introductory language of paragraph (b)(4), added the proviso at the end of the first sentence and deleted the colon at the end; deleted subparagraph (b)(4)(A), which read: "(A) Completing a course in computer skill competency, including but not limited to the phase one InTech model training program; or"; deleted the subparagraph (b)(4)(B) designation, and substituted "paragraph" for "subparagraph" in two places.

**The 2011 amendment,** effective July 1, 2011, added paragraph (b)(4.1).

**Code Commission notes.** — Ga. L. 1991, p. 1546, § 4, added a new subsection (e). Pursuant to Code Section 28-9-5, the new subsection was redesignated as subsection (f).

Pursuant to Code Section 28-9-5, in 2002, a comma was added after "revoking a certificate" in the fourth sentence of subsection (a).

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

**Law reviews.** — For comment, "Teacher Competency Testing: 'Decertification' and the Federal Constitution and Title VII," see 37 Emory L.J. 1077 (1988).

### OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the statutory provisions, opinions under former Ga. L. 1977, p. 991 and former Code Section 20-2-284, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Scope of term "professionally certificated personnel".** — Classroom teachers, supervisory or administrative personnel, and regional and county librarians, if employed by the public school systems of this state, were included in the definition of "professionally certificated personnel", while clerical personnel, clerical personnel employed in libraries, teacher aides, paraprofessionals, and private school nurses were not included in the definition. 1977 Op. Att'y Gen. No. 77-76 (decided under Ga. L. 1977, p. 991).

**Decision not to "grant" a teaching certificate** by officials in the certification division of the Department of Education based upon the failure of an applicant to meet certain required criteria is not a "contested case" within the meaning of O.C.G.A. § 50-13-2(2) of the Georgia Ad-

ministrative Procedure Act. 1991 Op. Att'y Gen. No. 91-10.

**Renewal and recertification.** — Teacher may surrender a renewable certificate prior to the renewal date of that certificate; however, to be recertified such a teacher must comply with the initial certification requirements including, but not limited to, the teacher certification test. Once the Quality Basic Education Act becomes effective July 1, 1986, renewal of teaching certificates must comply with that Act. 1985 Op. Att'y Gen. No. 85-25.

**Certification of vocational-technical teachers.** — Teachers in vocational-technical schools are not required to be certified since the legislature no longer views vocational-technical schools to be part of the public school system. 1984 Op. Att'y Gen. No. 84-43, rescinding 1967 Op. Att'y Gen. No. 67-14 and 1983 Op. Att'y Gen. No. 83-54 to the extent that they conflict with this opinion (decided under former Code Section 20-2-284).

**Private teacher who furnishes private lessons to students on school property** need not be certificated. 1988 Op. Att'y Gen. No. U88-6.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 147 et seq., 163.

**C.J.S.** — 79 C.J.S., Schools and School Districts, § 196 et seq.

### 20-2-200.1. Exemption from testing for transferring out-of-state teachers.

The commission shall not require a teacher from another state desiring to transfer to this state to take a test of specific subject matter or a test of broad general knowledge to obtain a renewable certificate if such teacher:

(1) Holds a valid, professional state educator's certificate or license from a state that is a party to the National Association of State Directors of Teacher Education and Certification Interstate Contract; and

(2) Has a minimum of five years of satisfactory appraisals or ratings on any annual performance evaluations. (Code 1981, § 20-2-200.1, enacted by Ga. L. 2003, p. 398, § 1.)



**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2003, the provisions currently appearing as Code Section 20-2-200.1 were redesignated from Code

Section 20-2-200 as directed by the instructional language of Ga. L. 2003, p. 398, § 1.

**20-2-201. Specific course requirements; in-service or continuing education; on-line offerings.**

(a) Universities and colleges having teacher preparation programs for grades pre-kindergarten through 12 shall require students in such programs to be proficient in computer and other instructional technology applications and skills including understanding desktop computers, their applications, integration with teaching and curriculum, and their utilization for individualized instruction and classroom management. There shall be a test to assess the proficiency of students enrolled in teacher preparation programs in computer and other instructional technology applications and skills.

(b) Each local unit of administration shall be required to provide all professional personnel certificated by the Professional Standards Commission 12 clock hours of in-service or continuing education in each calendar year, or meet requirements of the Southern Association of Colleges and Schools. Such in-service programs shall be developed by the local unit of administration in conjunction with such agencies as regional educational service agencies, colleges and universities, and other appropriate organizations. These programs shall be designed to address identified needs determined by appropriate personnel evaluation instruments. These programs shall also focus on improving the skills of certificated personnel that directly relate to improving student achievement, as reflected in the revised certification renewal rules established by the Professional Standards Commission pursuant to paragraph (4.1) of subsection (b) of Code Section 20-2-200 regarding the impact of professional learning on student achievement. Records of attendance shall be maintained by local units of administration and shall be monitored by appropriate Department of Education staff.

(c) As used in this subsection, “on line” means by electronic network or Internet. Each regional education service agency or college or university that offers in-service or continuing education for professional personnel for certification or recertification shall offer some in-service or continuing education on line through the Internet or offer access to equivalent in-service or continuing education on line so that a teacher or other professional employee can take the training at a location other than the location where the in-service or continuing education is conducted in person. For purposes of certification or recertification, the Professional Standards Commission shall treat in-service or continuing education conducted on line as if such in-service or continuing education had been conducted in person. Local units of administration may

permit professional personnel to use computers and other electronic equipment available at schools for in-service or continuing education at times before and after normal school hours when other professional duties are not scheduled for the individual. (Code 1981, § 20-2-201, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1991, p. 1546, § 4; Ga. L. 1992, p. 2365, § 2; Ga. L. 2000, p. 618, § 31; Ga. L. 2003, p. 398, § 2; Ga. L. 2004, p. 946, § 1; Ga. L. 2005, p. 60, § 20/HB 95; Ga. L. 2012, p. 355, § 4/SB 404.)

**The 2012 amendment**, effective July 1, 2012, added “, as reflected in the revised certification renewal rules established by the Professional Standards Commission pursuant to paragraph (4.1) of subsection (b) of Code Section 20-2-200 regarding the impact of professional learning on student

achievement” to the end of the fourth sentence of subsection (b).

**Editor’s notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

**20-2-201.1. (Repealed effective July 1, 2015.) Professional Learning Rules Task Force; composition; recommendation of professional learning rules.**

(a) The Department of Education shall establish the Professional Learning Rules Task Force for the purposes of reviewing current State Board of Education professional learning rules, reviewing current research regarding professional learning, providing suggestions for revisions to the rules, and providing suggestions for implementation.

(b) The task force shall be composed of, at a minimum, the following members:

- (1) One representative of the Professional Standards Commission;
- (2) One representative of the Department of Education;
- (3) One school system level professional learning coordinator;
- (4) One representative from the central office of the University System of Georgia;
- (5) One representative from a college of education within the University System of Georgia;
- (6) One representative from a private college of education in this state;
- (7) One representative from a regional educational service agency;
- (8) One representative local school superintendent;
- (9) One representative public school principal;
- (10) One representative public school elementary school teacher;

(11) One representative public school middle school teacher;

(12) One representative public school high school teacher;

(13) One representative from the Georgia Staff Development Council; and

(14) One representative from Learning Forward (National Staff Development Council).

(c) The representative from the Department of Education shall serve as chairperson of the task force. The task force shall meet at the call of the chairperson.

(d) Members of the task force shall serve without compensation.

(e) The task force shall present recommendations for professional learning rules to the State Board of Education no later than July 1, 2013. Such recommendations shall include requiring principals, school system leaders, and state leaders to ensure that teachers have opportunities for professional learning and are consistent with major research findings and best practices regarding professional learning and shall be aligned with the revised rules of the Professional Standards Commission relating to certification renewal rules requiring the demonstration of the impact of professional learning on educator and student performance. Recommendations shall be included in revisions to the State Board of Education professional learning rules and shall be adopted on or before June 30, 2015.

(f) This Code section shall be repealed in its entirety on July 1, 2015. (Code 1981, § 20-2-201.1, enacted by Ga. L. 2012, p. 1037, § 1/SB 184.)

**Effective date.** — This Code section became effective May 2, 2012.

## **20-2-202. Life certificates.**

All teachers and other professional personnel who hold life certificates shall be entitled to carry forward that lifetime status if they become qualified by reason of additional training for a next higher level of certification in the same field. However, holders of life certificates shall be subject to the tests and assessments regarding certification pursuant to subsection (b) of Code Section 20-2-200 when such tests or assessments are required to qualify for other provisions as set forth in this article or by Professional Standards Commission policy or regulation. (Code 1981, § 20-2-202, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1991, p. 1546, § 4.)



**20-2-203. Validity period for renewable certificates.**

All renewable certificates granted by the Professional Standards Commission shall have a validity period of five years. (Code 1981, § 20-2-203, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1991, p. 1546, § 4.)

**20-2-204. Paraprofessional and permitted personnel; classification of all certified or permitted personnel.**

(a) As used in this Code section, the term:

(1) “Paraprofessional” is defined as a person who may have less than professional-level certification, who relates in role and function to a professional and does a portion of the professional’s job or tasks under the supervision of the professional, and whose decision-making authority is limited and regulated by the professional. Such a paraprofessional shall possess the minimum of a high school diploma or a general educational development (GED) diploma. If assigned to positions governed by federal regulations, the paraprofessional must meet specified federal hiring requirements.

(2) “Permitted personnel” is defined as persons who may not qualify for professional certificates, including retired teachers, but who function in the educational programs in the same manner as certificated personnel. Such personnel qualify for their positions on the basis of experience rather than formal education.

(b) The Professional Standards Commission shall provide for the classification of all certified and permitted personnel employed in the public schools of this state, and no such personnel shall be employed in the public schools of this state unless they meet such minimum criteria as developed by the commission; provided, however, that such classifications shall be based only upon academic, technical, and professional training and experience of such personnel. The commission is authorized to provide for revoking or denying a certificate or permit for good cause after an investigation is conducted and notice and hearing is provided the certificate or permit holder. (Code 1981, § 20-2-204, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1991, p. 1546, § 4; Ga. L. 2001, p. 4, § 20; Ga. L. 2003, p. 398, § 3.)

**20-2-205. Georgia Master Teacher Program.**

(a) The General Assembly finds that excellent public school teachers deserve recognition for the extraordinary learning opportunity they provide to Georgia students.

(b) The Professional Standards Commission is authorized and directed to establish the “Georgia Master Teacher Program” to provide

recognition to certificated public school teachers who exhibit excellence in the classroom.

(c) The Professional Standards Commission shall establish criteria for a Master Teacher Certification. Such criteria shall include, at a minimum, evidence of student achievement, which must include student progress. A public school teacher with three or more years of teaching experience in Georgia may submit an application to the Professional Standards Commission for a Master Teacher Certification. The Professional Standards Commission shall review each application and determine whether a teacher meets the criteria for a Master Teacher Certification. If the Professional Standards Commission finds that a teacher's application meets the criteria, the teacher will be given a Master Teacher Certification, and that teacher will be known as and may be called a Master Teacher for a term to be determined pursuant to rules and regulations of the Professional Standards Commission, but in no event longer than seven years. The Professional Standards Commission is authorized to develop rules and regulations governing the Master Teacher Certification. (Code 1981, § 20-2-205, enacted by Ga. L. 2005, p. 717, § 1/SB 34; Ga. L. 2009, p. 4, § 1A/HB 455.)

**Law reviews.** — For article on 2005 enactment of this Code section, see 22 Ga. St. U. L. Rev. 83 (2005).

## **20-2-206. Alternative teacher certification program.**

(a) For purposes of this Code section, the term “core academic subject” means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, or geography.

(b)(1) Each local school system may provide an alternative teacher certification program upon approval by the Professional Standards Commission for a secondary school teacher candidate to teach a course or courses in a core academic subject who:

(A) Possesses a master's degree, doctoral degree, or Juris Doctor in each academic subject in which the candidate will teach;

(B) Receives high-quality professional development that is sustained, intensive, and classroom focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(C) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(D) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(E) Demonstrates satisfactory progress toward full certification as prescribed by the Professional Standards Commission.

(2) The Professional Standards Commission shall apply the least restrictive standards when approving a school system developed program under this subsection.

(3) Any teacher certified pursuant to this subsection shall be considered a highly qualified teacher for purposes of the federal No Child Left Behind Act (P.L. 107-110).

(c) Each local school system may provide an alternative teacher certification program upon approval by the Professional Standards Commission for a secondary school teacher candidate to teach a course or courses in a subject that is not a core academic subject who:

(1) Possesses a master's degree, doctoral degree, or Juris Doctor in each academic subject in which the candidate will teach; and

(2) Demonstrates satisfactory progress toward full certification as prescribed by the Professional Standards Commission.

(d) A teacher receiving initial certification pursuant to this Code section shall be treated in the same manner as certificated professional personnel for purposes of this chapter or any local board of education policy, including receiving salaries pursuant to the minimum salary schedule provided for in Code Section 20-2-212.

(e) A local school system shall not discriminate or treat differently in any manner a teacher possessing initial certification pursuant to this Code section, an applicant seeking initial certification pursuant to this Code section, or an individual meeting the requirement contained in subparagraph (b)(1)(A) or paragraph (1) of subsection (c) of this Code section and eligible for initial certification pursuant to this Code section, including, but not limited to, refusal to admit such teacher to a job fair or other teacher recruitment activity. (Code 1981, § 20-2-206, enacted by Ga. L. 2007, p. 259, § 4/SB 72.)

## **20-2-207. Online course on educator ethics.**

The Georgia Department of Education and the Professional Standards Commission shall cooperatively develop an online course on educator ethics. Such course shall include information on the code of ethics for educators established by the Professional Standards Commission pursuant to Code Section 20-2-984.1. One area of emphasis in the course shall be best practices for administering state-mandated assessments. (Code 1981, § 20-2-207, enacted by Ga. L. 2011, p. 511, § 2/HB 285.)



**Effective date.** — This Code section became effective July 1, 2011.

## Subpart 2

### Conditions of Employment

#### **20-2-210. Annual performance evaluation.**

(a) All personnel employed by local units of administration, including school superintendents, shall have their performance evaluated annually by appropriately trained evaluators. All such performance evaluation records shall be part of the personnel evaluation file and shall be confidential. In the case of local school superintendents, such evaluations shall be performed by the local board of education. Certificated professional personnel who have deficiencies and other needs shall have professional development plans designed to mitigate such deficiencies and other needs as may have been identified during the evaluation process. Progress relative to completing the annual professional development plan shall be assessed during the annual evaluation process. The state board shall develop a model annual evaluation instrument for each classification of professional personnel certificated by the Professional Standards Commission. The local units of administration are authorized to use the models developed by the State Board of Education.

(b) Annual teacher evaluations shall at a minimum take into consideration the following:

(1) The role of the teacher in meeting the school's student achievement goals, including the academic gains of students assigned to the teacher;

(2) Observations of the teacher by the principal and assistant principals during the delivery of instruction and at other times as appropriate;

(3) Participation in professional development opportunities and the application of concepts learned to classroom and school activities;

(4) Communication and interpersonal skills as they relate to interaction with students, parents, other teachers, administrators, and other school personnel;

(5) Timeliness and attendance for assigned responsibilities;

(6) Adherence to school and local school system procedures and rules; and

(7) Personal conduct while in performance of school duties.

(c)(1) In making a determination of the academic gains of the students assigned to a teacher, evaluators should make every effort to have available and to utilize the results of a wide range of student achievement assessments, including those utilized by the teacher, set by the local board of education, or required under this article. It is recognized that in some instances a determination of the academic gains of the students assigned to a teacher is dependent upon student assessments which have not yet been administered at the time of the annual evaluation or, if they have been administered, the results of which are not yet available at the time of the annual evaluation. In such instances, the annual teacher evaluation shall be performed on the basis of information available at the time and shall be considered as the annual evaluation for the purposes of this article. As results of student assessments subsequently become available, an addendum to the annual evaluation shall be completed and become part of the teacher's cumulative evaluative record which may be used in a teacher's subsequent annual evaluations.

(2) A teacher or other certificated professional personnel's salary increase or bonus that is based in whole or in part on an evaluation which included student assessment results, standardized test scores, or standardized test answers that were falsified by such teacher or professional or known or caused by such teacher or professional to have been falsified shall be automatically forfeited. A teacher or other certificated professional personnel shall forfeit his or her right or interest in such salary increase or bonus and shall be liable for the repayment of any and all amounts previously paid to him or her based, in whole or in part, on the results of falsified student assessment results, falsified standardized test scores, or falsified standardized test answers.

(d) The superintendent of each local school system shall identify an appropriately trained evaluator for each person employed by the local unit of administration for the purposes of completing an annual evaluation as required in subsections (a) and (b) of this Code section. The superintendent of each local school system shall be responsible for ensuring compliance with this Code section.

(e) In addition to the evaluation by a trained evaluator provided for in subsection (a) of this Code section, the local school system may require each principal and assistant principal of a school to have his or her performance evaluated annually by the teachers in the school. Such evaluations by teachers shall be confidential, solicited and recorded on an anonymous basis, and made available only to the local school superintendent and the local board of education. Such evaluations shall not be subject to Article 4 of Chapter 18 of Title 50.

(f) Any teacher who removes more than two students from his or her total class enrollment in any school year under subsection (b) of Code

Section 20-2-738 who are subsequently returned to the class by a placement review committee because such class is the best available alternative may be required to complete professional development to improve classroom management skills, other skills on the identification and remediation of academic and behavioral student needs, or other instructional skills as identified in a plan derived by the principal of the school in consultation with the teacher. (Code 1981, § 20-2-210, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1988, p. 612, § 9; Ga. L. 1991, p. 1546, § 4; Ga. L. 1995, p. 1072, § 1; Ga. L. 1999, p. 438, § 3; Ga. L. 2000, p. 618, § 32; Ga. L. 2012, p. 111, § 1/HB 692; Ga. L. 2012, p. 358, § 9/HB 706.)

**The 2012 amendments.** — The first 2012 amendment, effective April 16, 2012, designated the existing provisions of subsection (c) as paragraph (c)(1), and, in paragraph (c)(1), inserted “of which” near the end of the second sentence; and added paragraph (c)(2). The second 2012 amendment, effective July 1, 2012, deleted the former second sentence of subsection (d), which read: “The evaluator shall be required to complete such annual evaluation for each certificated person prior to April 1 of each year.”

**Editor’s notes.** — Ga. L. 1999, p. 438, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Improved Student Learning Environment and Discipline Act of 1999.’”

Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

**Law reviews.** — For note on 1999 amendment to this Code section, see 16 Ga. St. U. L. Rev. 116 (1999).

## **20-2-211. Annual contract; disqualifying acts; job descriptions.**

(a) All teachers, principals, other certificated professional personnel, and other personnel of a local unit of administration shall be employed and assigned by its governing board on the recommendation of its executive officer. Minimum qualifications for employment of all personnel may be prescribed by the State Board of Education unless otherwise provided by law. Employment contracts of teachers, principals, and other certificated professional personnel shall be in writing, and such contracts shall be signed in duplicate by such personnel on their own behalf and by the executive officer of the local unit of administration on behalf of its governing board.

(b) Any other provisions of this article or any other laws to the contrary notwithstanding, each local governing board shall, by not later than April 15 of the current school year, tender a new contract for the ensuing school year to each teacher and other professional employee certificated by the Professional Standards Commission on the payroll of the local unit of administration at the beginning of the current school year, except those who have resigned or who have been terminated as provided in Part 7 of Article 17 of this chapter, or shall notify in writing each such teacher or other certificated professional employee of the intention of not renewing his or her contract for the ensuing school



year; provided, however, that for school years 2010-2011, 2011-2012, 2012-2013, 2013-2014, and 2014-2015 only, each local governing board shall have until May 15 of the current school year to tender such new contracts or provide such written notice. Such contracts when tendered to each teacher or other professional employee shall be complete in all terms and conditions of the contract, including the amount of compensation to be paid to such teacher or other professional employee during the ensuing school year, and shall not contain blanks or leave any terms and conditions of the contract open. A letter of intent or similar document shall not constitute a contract and shall not be construed to require or otherwise legally bind the teacher or other professional employee to return to such school system. Upon request, a written explanation for failure to renew such contract shall be made available to such certificated personnel by the executive officer. When such notice of intended termination has not been given by April 15, or by May 15 for school years 2010-2011, 2011-2012, 2012-2013, 2013-2014, and 2014-2015 only, the employment of such teacher or other certificated professional employee shall be continued for the ensuing school year unless the teacher or certificated professional employee elects not to accept such employment by notifying the local governing board or executive officer in writing not later than May 1, or by June 1 for school years 2010-2011, 2011-2012, 2012-2013, 2013-2014, and 2014-2015 only.

(c) Any other provisions of this article or any other laws to the contrary notwithstanding, no local governing board shall employ any person as a teacher who has been discharged from the armed forces of the United States with a dishonorable discharge as a result of desertion or any person who has fled or removed himself from the United States for the purpose of avoiding or evading military service in the armed forces of the United States, excluding those who have been fully pardoned.

(d) Each local school system shall have a job description for each certificated professional personnel classification, shall have policies and procedures relative to the recruitment and selection of such personnel, and shall adhere to such recruitment and selection policies and procedures. Such policies and procedures shall assure nondiscrimination on the basis of sex, race, religion, or national origin. Such policies and procedures shall also include the announcement in writing of the availability of all certificated positions to the appropriate colleges and universities in the state and to the Department of Education and within the local school system. A local board of education may also announce such positions to colleges and universities in other states. (Code 1981, § 20-2-211, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1991, p. 1546, § 4; Ga. L. 1994, p. 1936, § 1; Ga. L. 1995, p. 1072, § 2; Ga. L. 1997, p. 1390, § 1; Ga. L. 2000, p. 618, §§ 33, 34; Ga.

L. 2003, p. 499, § 1; Ga. L. 2009, p. 4, § 1/HB 455; Ga. L. 2010, p. 2, § 1/HB 906; Ga. L. 2010, p. 237, § 1A/HB 1079; Ga. L. 2011, p. 647, § 6/HB 192.)

**The 2010 amendments.** — The first 2010 amendment, effective March 16, 2010, in subsection (b), in the first sentence, substituted “school years 2010-2011, 2011-2012, and 2012-2013” for “school year 2009-2010” and substituted “May 15 of the current school year” for “May 15, 2009,” and, in the last sentence, substituted “May 15 for school years 2010-2011, 2011-2012, and 2012-2013” for “May 15, 2009, for school year 2009-2010” and substituted “June 1 for school years 2010-2011, 2011-2012, and 2012-2013” for “June 1, 2009, for school year 2009-2010” at the end. The second 2010 amendment, effective July 1, 2010, added paragraph (e)(7).

**The 2011 amendment,** effective May 13, 2011, substituted “2011-2012, 2012-2013, 2013-2014, and 2014-2015” for “2011-2012, and 2012-2013” throughout subsection (b).

**Cross references.** — Procedure for nonrenewal of contracts, § 20-2-942.

**Editor’s notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

Former subsection (e) was repealed on its own terms effective January 1, 2011.

**Law reviews.** — For note on the 1994 amendment of this Code section, see 11 Ga. St. U. L. Rev. 184 (1994).

## JUDICIAL DECISIONS

**Editor’s note.** — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1551(94½) and former Code 1933, § 32-913, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Teacher’s action for reverse discrimination under federal law** could not be made against school superintendent and school board members in their individual capacities. *Reynolds v. Glynn County Bd. of Educ.*, 968 F. Supp. 696 (S.D. Ga. 1996), *aff’d*, 119 F.3d 11 (11th Cir. 1997).

**O.C.G.A. § 20-2-211 contemplates continuous employment** under the same contract of employment. Those who resign or are terminated are not covered by the provisions of subsection (b). By definition, one who is employed under a contract later than the beginning of the school year is not entitled to notice of nonrenewal. *Oates v. Coffee County Bd. of Educ.*, 198 Ga. App. 77, 400 S.E.2d 355 (1990), *cert. denied*, 198 Ga. App. 898, 400 S.E.2d 355 (1991).

**Superintendent authorized to execute contracts.** — Office of county super-

intendent of education is substituted for the office of county school commissioner and the county superintendent is authorized to execute contracts with teachers on the part of the board. *Orr v. Riley*, 160 Ga. 480, 128 S.E. 669 (1925) (decided under former Code 1910, § 1551 (94½)).

**Contracts between county boards and teachers in schools under their supervision must be in writing.** *Orr v. Riley*, 160 Ga. 480, 128 S.E. 669 (1925) (decided under former Code 1910, § 1551 (94½)).

**Employment contract illegal when not in writing.** — No contract made by a county board of education for the employment of a teacher to serve in the schools under the jurisdiction of the board is legal or possesses any validity if the contract is not in writing. *Dodd v. Board of Educ.*, 46 Ga. App. 235, 167 S.E. 319 (1933) (decided under former Code 1910, § 1551 (94½)).

**Illegal contract unenforceable against board.** — Since a county board of education is a political body and has no power other than that conferred by statutory authority, no contract made by the board which is illegal and invalid because the contract is not in writing is, relative to exceptions to the application of the statute



of frauds, enforceable against the board, notwithstanding a part performance of the contract by the opposite party thereto. *Dodd v. Board of Educ.*, 46 Ga. App. 235, 167 S.E. 319 (1933) (decided under former Code 1910, § 1551 (94½)).

**Motive or intent for racial discrimination.** — School district, acting through the district's board of education, was authorized to take employment actions with respect to district personnel only on the recommendation of the interim superintendent, pursuant to O.C.G.A. § 20-2-211, as the board had no independent authority to hire, fire, or otherwise assign district personnel; the intent or the motive of the interim superintendent in not recommending a former employee for a position as a principal or assistant superintendent was attributable to the board of education and therefore the school district. *Gordon v. Dooly County Sch. Dist.*, No. 5:04CV124 (DF), 2005 U.S. Dist. LEXIS 37878 (M.D. Ga. Dec. 28, 2005).

**Contractual power of Richmond**

**County board not limited by section.**

— Even though this section, as to all counties where it was applicable, made it obligatory that the boards of education should contract in writing with their teachers, it was not applicable so as to limit the contractual power of the Board of Education of Richmond County under the local acts (Ga. L. 1872, pp. 46, 456-463; Ga. L. 1937, pp. 1409-1413). *County Bd. of Educ. v. Young*, 187 Ga. 644, 1 S.E.2d 739 (1939) (decided under former Code 1933, § 32-913).

**Notification of termination of contract.** — When a county board of education did not terminate or suspend the complainant teacher during the teacher's contract year, but simply decided that the board was not going to renew the teacher's contract for the upcoming year, O.C.G.A. § 20-2-211(b), and not O.C.G.A. § 20-2-940, applied. *Baker v. McIntosh County Sch. Dist.*, 264 Ga. App. 509, 591 S.E.2d 362 (2003).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 150 et seq.

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 315 et seq., 383 et seq.

**ALR.** — Validity, construction, and effect of municipal residency requirements for teachers, principals, and other school employees, 75 ALR4th 272.

### 20-2-211.1. Clearance certificates issued by the Professional Standards Commission relating to fingerprint and criminal background checks.

(a) As used in this Code section, the term:

(1) "Clearance certificate" means a certificate issued by the Professional Standards Commission that verifies that an educator has completed fingerprint and criminal background check requirements as specified in this Code section and that the individual does not have a certificate that is currently revoked or suspended in Georgia or any other state; provided, however, that additional fingerprinting shall not be required for renewal of a clearance certificate or for educators who possess a professional educator certificate as of January 1, 2011. A clearance certificate shall be a renewable certificate valid for five years. Clearance certificates shall be subject to fees in accordance with subsection (e) of Code Section 20-2-200.

(2) "Educator" means a teacher, school or school system administrator, or other education personnel who would, if not exempted



pursuant to a charter under Article 31 or 31A of this chapter or an increased flexibility contract under Article 4 of this chapter, be required to hold a professional educator certificate, license, or permit issued by the Professional Standards Commission and persons who have applied for but have not yet received such a certificate, license, or permit.

(3) "Local unit of administration" shall have the same meaning as in Code Section 20-2-242 and shall also include state chartered special schools and commission charter schools.

(4) "Professional educator certificate" means a certificate, license, or permit issued by the Professional Standards Commission that is based upon academic, technical, and professional training, experience, and competency of such personnel as provided for under Code Section 20-2-200.

(b)(1) On and after January 1, 2011, all educators employed by a local unit of administration shall hold a valid clearance certificate; provided, however, that an educator who possesses a professional educator certificate as of January 1, 2011, shall not be required to obtain a clearance certificate until his or her professional educator certificate is up for renewal. A local unit of administration may employ an educator who does not already hold a valid clearance certificate, provided the individual has applied for a clearance certificate, for a maximum of 20 days in order to allow for the receipt of the results of the criminal record check and issuance of the clearance certificate. The requirements of this Code section shall be in addition to professional educator certificate requirements unless such educator is employed by a school which is exempt from teacher certification requirements pursuant to a charter under Article 31 or 31A of this chapter or an increased flexibility contract under Article 4 of this chapter.

(2) Any other Code sections to the contrary notwithstanding, educators holding a valid clearance certificate shall be subject to the code of ethics for educators as established pursuant to Code Section 20-2-984.1 and shall be subject to Code Sections 20-2-984, 20-2-984.2, 20-2-984.3, 20-2-984.4, and 20-2-984.5.

(c) A local unit of administration shall ensure that all personnel employed by such local unit of administration after January 1, 2011, shall be fingerprinted and have a criminal record check performed. The local unit of administration shall have the authority to employ such person for a maximum of 20 days in order to allow for the receipt of the results of the criminal record check. The local unit of administration shall adopt policies to provide for the subsequent criminal record checks of personnel continued in employment in the local unit of administration.

(d)(1) Local units of administration shall have the authority and responsibility to order criminal record checks pursuant to this Code section through the Georgia Crime Information Center and the Federal Bureau of Investigation and shall have the authority to receive the results of such criminal record checks. Local units of administration shall also have the authority to forward the results of criminal record checks to the Professional Standards Commission as necessary regarding potential violations of the code of ethics for educators. The Professional Standards Commission shall also have the authority to order criminal record checks pursuant to this Code section through the Georgia Crime Information Center and the Federal Bureau of Investigation and shall have the authority to receive the results of such criminal record checks.

(2) Fingerprints shall be in such form and of such quality as shall be acceptable for submission to the Georgia Crime Information Center and the Federal Bureau of Investigation. It shall be the duty of each law enforcement agency in this state to fingerprint those persons required to be fingerprinted by this Code section.

(e) At the discretion of local units of administration, fees required for a criminal record check by the Georgia Crime Information Center or the Federal Bureau of Investigation shall be paid by the local unit of administration or by the individual seeking employment or making application to the Professional Standards Commission.

(f) The Professional Standards Commission is authorized to adopt rules and regulations necessary to carry out the provisions of this Code section. (Code 1981, § 20-2-211.1, enacted by Ga. L. 2010, p. 237, § 1B/HB 1079; Ga. L. 2011, p. 511, § 3/HB 285.)

**Effective date.** — This Code section became effective July 1, 2010.

**The 2011 amendment,** effective July 1, 2011, deleted “noneducator” preceding “personnel” in the first and last sentences of subsection (c); added paragraph (d)(1); redesignated former subsection (d) as present paragraph (d)(2); substituted “Georgia Crime Information Center and the Federal Bureau of Investigation” for “National Crime Information Center under standards adopted by the Federal Bureau of Investigation or the United States Department of Justice” in the first sentence of paragraph (d)(2); substituted “Georgia Crime Information Center or the Federal Bureau of Investigation shall” for “Georgia Crime Information Center, the National Crime Information Center, the Federal Bureau of Investigation, or the

United States Department of Justice shall” in subsection (e); deleted former subsection (f), which read: “It shall be the duty of the State Board of Education to submit this Code section to the Georgia Bureau of Investigation for submission to the Federal Bureau of Investigation and the United States Department of Justice for their consent to conduct criminal record checks through the National Crime Information Center as required by federal law, rules, or regulations. No criminal record checks through the National Crime Information Center shall be required by this Code section unless and until such consent is given.”; deleted former subsection (g), which read: “Information provided by the Georgia Crime Information Center or the National Crime Information Center shall be used only for the purposes

allowed by Code Section 35-3-35 or by applicable federal laws, rules, or regulations.”; deleted former subsection (h), which read: “The State Board of Educa-

tion is authorized to adopt rules and regulations necessary to carry out the provisions of this Code section.”; and added subsection (f).

## **20-2-212. Salary schedules.**

(a) The State Board of Education shall establish a schedule of minimum salaries for services rendered which shall be on a ten-month basis and which shall be paid by local units of administration to the various classifications of professional personnel required to be certificated by the Professional Standards Commission. The minimum salary schedule shall provide a minimum salary base for each classification of professional personnel required to be certificated; shall provide for increment increases above the minimum salary base of each classification based upon individual experience and length of satisfactory service; and shall include such other uniformly applicable factors as the state board may find relevant to the establishment of such a schedule. The minimum salary base for certificated professional personnel with bachelor's degrees and no experience, when annualized from a ten-month basis to a 12 month basis, shall be comparable to the beginning salaries of the recent graduates of the University System of Georgia holding bachelor's degrees and entering positions, excluding professional educator teaching positions, in Georgia having educational entry requirements comparable to the requirements for entry into Georgia public school teaching. The placement of teachers on the salary schedule shall be based on certificate level and years of creditable experience, except that a teacher shall not receive credit for any year of experience in which the teacher received an unsatisfactory performance evaluation. The General Assembly shall annually appropriate funds to implement a salary schedule for certificated professional personnel. For each state fiscal year, the state board shall adopt the salary schedule for which funding has been appropriated by the General Assembly. A local unit of administration shall not pay to any full-time certificated professional employee a salary less than that prescribed by the schedule of minimum salaries, except as required by this Code section; nor shall a local unit of administration pay to any part-time certificated professional employee less than a pro rata portion of the respective salary prescribed by the schedule of minimum salaries, except as required by this Code section. For purposes of this subsection, an educator's placement on the salary schedule shall not be based on a leadership degree, which shall mean a degree earned in conjunction with completion of an educator leadership preparation program approved by the Professional Standards Commission, unless the educator is employed in a leadership position as defined by the State Board of Education, but shall be placed on the salary schedule position attributable to the educator but for the leadership degree; provided, however,



that this shall not apply, regardless of whether or not he or she is in a leadership position, to:

(1) An educator who possessed a leadership degree prior to July 1, 2010; or

(2) An educator who possessed:

(A) A master's level leadership degree prior to July 1, 2012;

(B) An education specialist level leadership degree prior to July 1, 2013; or

(C) A doctoral level leadership degree prior to July 1, 2014,

so long as he or she was enrolled in such leadership preparation program on or before April 1, 2009.

(b) Local units of administration may supplement the salaries of personnel subject to the schedule of minimum salaries under subsection (a) of this Code section and, in fixing the amount of those supplements, may take into consideration the nature of duties to be performed, the responsibility of the position held, the subject matter or grades to be taught, and the experience and performance of the particular employee whose salary is being supplemented. In any fiscal year in which such personnel receive an increase under the minimum salary schedule, a local unit of administration shall not decrease any local salary supplement for such personnel below the local supplement amount received in the immediately preceding fiscal year by those personnel of that local unit of administration unless such local unit of administration has conducted at least two public hearings regarding such decrease, notice of which hearings, including the time, place, agenda, and specific subject matter of the meeting, the local unit shall cause to be published in the legal organ of the county which is the legal situs of such local unit one time at least seven days prior to the date such hearings are to be held. Written notice shall be provided to each employee subject to the schedule of minimum salaries under subsection (a) of this Code section at least seven days prior to the date of the hearings. Each such hearing shall be held and shall commence after school hours to allow certificated and noncertificated personnel to attend.

(c) A local unit of administration shall pay beginning classroom teachers the first salary payment for the number of days worked at the end of the first month of the school year in which service is rendered. The State Board of Education shall develop rules and procedures for implementing this subsection by July 1, 2001. (Code 1981, § 20-2-212, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1988, p. 612, § 10; Ga. L. 1991, p. 1546, § 4; Ga. L. 1994, p. 782, § 1; Ga. L. 2000, p. 618, § 35; Ga. L. 2001, p. 1096, § 1; Ga. L. 2006, p. 469,

§ 1/HB 1483; Ga. L. 2009, p. 4, § 1B/HB 455; Ga. L. 2010, p. 426, § 1/HB 923; Ga. L. 2011, p. 752, § 20/HB 142.)

**The 2010 amendment**, effective July 1, 2010, rewrote the last sentence in subsection (a).

**The 2011 amendment**, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted “so long as” for “as long as” in the concluding language of paragraph (a)(2).

**Editor’s notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

## JUDICIAL DECISIONS

**Cited in** Muscogee County Bd. of Educ. v. Boisvert, 196 Ga. App. 537, 396 S.E.2d 303 (1990).

## OPINIONS OF THE ATTORNEY GENERAL

**Editor’s notes.** — In light of the similarity of the statutory provisions, decisions under former Code Section 20-2-284, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Paying school personnel for unused sick or personal leave.** — Concerning the legality of a school system paying personnel for unused sick or personal leave, there does not seem to be any extant constitutional or statutory prohibi-

tion of making such payments as a part of an overall compensation plan, provided that specific peripheral statutory requirements, such as those pertaining to the maximum number of days of sick leave which can be accumulated, are not violated. 1986 Op. Att’y Gen. No. U86-19 (decided under former § 20-2-284).

**Voluntarily taking part of compensation as benefits.** — Teacher may use a portion of the state minimum salary as a contribution to a cafeteria plan of fringe benefits. 1987 Op. Att’y Gen. No. 87-28.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 183 et seq.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 450 et seq.

### 20-2-212.1. Increase in state salary of person selected as Georgia Teacher of the Year.

Any person who has been selected as Georgia Teacher of the Year, as determined by the State Board of Education, shall be moved up one salary step on the state salary schedule or receive an equivalent percentage rate increase in state salary to become effective on and after the beginning of the next school year in which the person is employed in the public schools of this state. The increase in state salary provided by this Code section shall be in addition to any other increase for which the person is otherwise eligible. This Code section shall not be construed to require or prohibit any increase in the local supplement

payable to such teacher. (Code 1981, § 20-2-212.1, enacted by Ga. L. 1991, p. 1630, § 1.2.)

**20-2-212.2. Salary increase for persons receiving certification from National Board for Professional Teaching Standards; state payment of program participation fee; repayment; reimbursement.**

(a) As used in this Code section, the term:

(1) “High-needs school” means a Georgia public school that has received an unacceptable rating for a period of two or more consecutive years; and

(2) “National certification” means certification obtained from the National Board for Professional Teaching Standards.

(b) For initial national certification prior to July 1, 2006, and subsequent renewals anytime thereafter,

(1) Any person who:

(A) Is currently teaching full time in a Georgia public school and holds a valid Georgia teaching certificate; and

(B) Has successfully completed the prerequisite portfolio of student work and examination and has received national certification

shall receive not less than a 10 percent rate increase in state salary for each year he or she holds national certification. Such increase shall be awarded beginning on the date such certification is received. The 10 percent increase shall be computed based on the state salary for such individual when national certification is received and recomputed each subsequent year based on the individual’s state salary for that school year. In the case of a person who has received such national certification prior to July 1, 2000, and is receiving or is eligible to receive a 5 percent rate increase, the 5 percent rate increase shall be changed to a 10 percent rate increase effective with the commencement of the 2000-2001 school year. The increase in state salary provided by this Code section shall be in addition to any other increase for which the person is eligible. An individual receiving a salary increase pursuant to this subsection shall cease to receive such increase if he or she leaves a teaching position after March 1, 2009. This subsection shall be subject to appropriations by the General Assembly.

(2) A teacher for whom the State of Georgia pays a portion of the national certification participation fee and who does not teach in a Georgia public school for at least one year after receiving certification



shall repay the state's portion of the participation fee to the state. Repayment is not required if the teacher is unable to complete the additional year of teaching due to the death or disability of the teacher, and repayment is not required if the teacher fails to receive national certification.

(3) The portion of the national certification program participation fee paid by the participant shall be reimbursed by the state upon certification for any teacher who is eligible for an increase pursuant to paragraph (1) of this subsection. This paragraph shall be subject to appropriations by the General Assembly.

(4) A teacher for whom the State of Georgia reimburses the cost of the participation fee and who does not teach in a Georgia public school for at least one year after receiving certification shall repay the reimbursement payment to the state. Repayment is not required if the teacher is unable to complete the additional year of teaching due to the death or disability of the teacher.

(b.1) Any person who has enrolled in the process, as determined by the Professional Standards Commission, of attaining national certification on or before March 1, 2005, and who obtains initial certification and subsequent renewals after July 1, 2006, shall be eligible for salary increases, subject to appropriations by the General Assembly, pursuant to subsection (b) of this Code section if such person otherwise meets the requirements of subsection (b) of this Code section.

(c) Except as provided for in subsections (b.1) and (c.1) of this Code section, for initial national certification between July 1, 2006, and March 1, 2009, and subsequent renewals anytime thereafter,

(1) Any person who:

(A) Is currently teaching full time in a high-needs school and holds a valid Georgia teaching certificate as defined by the Professional Standards Commission; and

(B) Has successfully completed the prerequisite portfolio of student work and examination and has received national certification

shall receive not less than a 10 percent rate increase in state salary for each year he or she holds national certification. Such increase shall be awarded beginning on the date such certification is received. The 10 percent increase shall be computed based on the state salary for such individual when national certification is received. A teacher who transfers to a high-needs school after such individual receives national certification shall receive such increase beginning on the effective date of transfer if the teacher meets the requirements of this subsection, and such increase shall be computed based on the state

salary for such individual on the effective date of the transfer. Provided such individual remains employed in a high-needs school or in a school that was designated as a high-needs school at the time the individual received national certification or transferred to such school and otherwise continues to meet the requirements of this subsection, the 10 percent increase shall be recomputed each subsequent year based on such individual’s state salary for that school year. An individual receiving a salary increase pursuant to this subsection shall cease to receive such increase if he or she leaves a teaching position after March 1, 2009. This subsection shall be subject to appropriations by the General Assembly.

(2) The Professional Standards Commission shall provide annually to the Department of Education a roster of teachers who have retained national certification and are eligible for the annual increase.

(c.1) Any person who has enrolled in the process, as determined by the Professional Standards Commission, of attaining national certification on or before March 1, 2009, shall be eligible for salary increases, subject to appropriations by the General Assembly, pursuant to subsection (c) of this Code section if such person otherwise meets the requirements of subsection (c) of this Code section.

(d) Except as provided in subsection (c.1) of this Code section, on and after July 1, 2009, only teachers receiving a salary increase pursuant to this Code section as of March 1, 2009, shall be eligible to continue receiving such salary increases, subject to appropriations by the General Assembly, but only if such teachers otherwise meet all applicable requirements. (Code 1981, § 20-2-212.2, enacted by Ga. L. 1996, p. 494, § 3; Ga. L. 1998, p. 1582, § 2; Ga. L. 2000, p. 618, § 36; Ga. L. 2001, p. 148, § 11; Ga. L. 2002, p. 397, § 2; Ga. L. 2005, p. 717, § 1A/SB 34; Ga. L. 2006, p. 72, § 20/SB 465; Ga. L. 2009, p. 101, § 1/HB 243.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2005, “of this Code section” was inserted at the end of subsection (b.1).

**Editor’s notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly,

provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

**Law reviews.** — For article on 2005 amendment of this Code section, see 22 Ga. St. U. L. Rev. 83 (2005).

JUDICIAL DECISIONS

**Teachers’ salary increase claims had to be brought against local school boards.** — Trial court did not err in granting the state’s motion to dismiss teachers’ action seeking a declaratory judgment that an amendment to O.C.G.A. § 20-2-212.2 was unconstitutional in that

the amendment impairs a vested right in a ten percent salary increase because any claim the teachers could have of entitlement to a salary increase had to be brought under the teachers’ contracts with the teachers’ employers, the local school boards; the teachers’ claims were

against the local school boards because and the local boards. *Stalling v. State*, 312 Ga. App. 154, 717 S.E.2d 733 (2011).

**20-2-212.3. Increasing teachers' salaries in areas of shortage; criteria for determining shortage.**

Reserved. Repealed by Ga. L. 2012, p. 358, § 10/HB 706, effective July 1, 2012.

**Editor's notes.** — This Code section Ga. L. 2004, p. 107, § 22; Ga. L. 2009, p. 303, § 7/HB 117.  
was based on Ga. L. 2000, p. 618, § 37;

**20-2-212.4. Additional five percent increase in teacher salary based on student performance.**

Reserved. Repealed by Ga. L. 2012, p. 358, § 11/HB 706, effective July 1, 2012.

**Editor's notes.** — This Code section  
was based on Ga. L. 2003, p. 896, § 1.

**20-2-212.5. Additional compensation for teachers in mathematics or science.**

(a)(1) On and after July 1, 2010, and until such date as may be determined by the State Board of Education that mathematics, science, or both are no longer areas in which there is an insufficient supply of teachers, a secondary school teacher in a local school system who is or becomes certified in mathematics or science by the Professional Standards Commission shall be moved to the salary step on the state salary schedule that is applicable to six years of creditable service, unless he or she is already on or above such salary step. From such salary step, the teacher shall be attributed one additional year of creditable service on the salary schedule each year for five years.

(2) After five years, such teacher may continue to be attributed one additional year of creditable service on the salary schedule each year if he or she meets or exceeds student achievement criteria established by the Office of Student Achievement.

(3) Upon expiration of five years, or any year thereafter that the teacher does not meet or exceed student achievement criteria as required by paragraph (2) of this subsection, such teacher shall be moved to the salary step applicable to the actual number of years of creditable service which the teacher has accumulated.

(4) This subsection shall be subject to appropriations of the General Assembly.

(b)(1)(A) On and after July 1, 2010, a kindergarten or elementary school teacher in a local school system who receives an endorse-



ment in mathematics, science, or both from the Professional Standards Commission shall receive a stipend of \$1,000.00 per endorsement for each year each such endorsement is in effect, up to a maximum of five years.

(B) After five years, such teacher may continue to receive such stipend if he or she meets or exceeds student achievement criteria established by the Office of Student Achievement.

(C) Upon expiration of five years, or any year thereafter that such a teacher does not meet or exceed student achievement as required by subparagraph (B) of this paragraph, such teacher shall cease to receive the stipend.

(D) This paragraph shall be subject to appropriations by the General Assembly.

(2)(A) In order to qualify for the stipend pursuant to paragraph (1) of this subsection, math and science endorsements shall:

(i) Be based on post-baccalaureate nondegree programs, independent of an initial preparation program in early childhood education;

(ii) Consist of a minimum of three courses, of which two courses shall be focused on the advancement of content knowledge and one course, or any additional course, shall be focused on content-specific pedagogy and proven strategies for teaching math or science to children in kindergarten through fifth grade; and

(iii) Include an authentic residency experience with a focus on application of knowledge and skills.

(B) The Professional Standards Commission shall establish standards for the math and science endorsements provided for in this subsection. (Code 1981, § 20-2-212.5, enacted by Ga. L. 2009, p. 156, § 1/HB 280.)

**Editor's notes.** — This Code section formerly pertained to academic coach programs. The former Code section was based on Code 1981, § 20-2-212.5, enacted by

Ga. L. 2005, p. 717, § 2/SB 34 and was repealed by its own terms effective June 30, 2009.

## **20-2-212.6. Limitation on salary increase for school superintendent or administrators.**

(a) If any local board of education furloughs teachers, paraprofessionals, cafeteria workers, bus drivers, custodians, support staff, or other nonadministrative positions during any school year, such local board of education shall not use any state funds to provide a salary

increase for the local school superintendent or administrators during such school year; provided, however, that this subsection shall not apply to any step increases on the state salary schedule which are applicable to a superintendent or administrator.

(b) In the event that any local board of education intends to provide a salary increase using local funds or private donations for the local school superintendent or administrators during a school year in which such local board of education furloughs teachers, paraprofessionals, cafeteria workers, bus drivers, custodians, support staff, or other nonadministrative positions, the local board of education shall prior to such action:

(1) Provide 30 days' notice of such intention including the rationale for raising such salaries when other local board of education employees are furloughed; and

(2) Conduct a public hearing for the purpose of providing an opportunity for full discussion and public input. The public hearing shall be advertised at least seven days prior to the date of such hearing in a local newspaper of general circulation which shall be the same newspaper in which other legal announcements of the local board of education are advertised. (Code 1981, § 20-2-212.6, enacted by Ga. L. 2010, p. 104, § 1/HB 977; Ga. L. 2011, p. 752, § 20/HB 142.)

**Effective date.** — This Code section became effective July 1, 2010.

**The 2011 amendment,** effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted “this subsection shall not apply” for “this shall not apply” in subsection (a), and revised punctuation in paragraph (b)(1).

**Editor's notes.** — This Code section formerly pertained to the Master Teacher and Academic Coach Implementation Committee. The Code section was formerly based on Code 1981, § 20-2-212.6, enacted by Ga. L. 2005, p. 717, § 2/SB 34 and was repealed by Ga. L. 2005, p. 717, § 2/SB 34, effective December 31, 2005.

## **20-2-213. Career ladder programs.**

Reserved. Repealed by Ga. L. 2012, p. 358, § 12/HB 706, effective July 1, 2012.

**Editor's notes.** — This Code section was based on Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1991, p. 1546, § 4.

## **20-2-213.1. Pay-for-performance for rewarding group activity.**

(a) The State Board of Education is authorized and directed to devise and implement a pay-for-performance program for rewarding group productivity. By December 31, 1992, and each December 31 thereafter, the State Board of Education shall develop performance criteria which shall be used to evaluate proposals submitted by local schools or systems for the determination of exemplary performance at the school

site. Such criteria will relate to the overall educational performance of the school in areas related to student outcomes and achievement. Such criteria shall also reflect the six national goals for education which have been adopted under Georgia 2000 and, to the extent feasible, socioeconomic or other demographic factors that may affect student achievement or other outcomes of education. Such criteria shall also reflect school level improvement on identified performance criteria, such as the numbers of remedial, SIA, and Chapter I students that achieved grade level performance.

(b) The state board shall create guidelines for the approval of local school proposals under this program and a system for weighing the various criteria in each school proposal according to school performance. The performance evaluation system shall be designed to determine the level of improvement achieved by the school based upon those criteria adopted and approved for the school proposal. Local schools which choose to apply for pay-for-performance awards for group productivity shall submit proposals through the local board of education, which must approve the proposals, to the State Board of Education. Such proposals shall be submitted annually and shall identify which of the state-wide performance criteria will be emphasized by the local school for the determination of award eligibility.

(c) The state board shall advise each local board of education as to whether the proposal submitted by each school applicant meets the guidelines for approval and, consequently, whether the proposal as submitted is eligible for award consideration. Local schools shall be allowed to modify their initial proposals in order to meet guidelines.

(d) Local school boards shall be informed by the state board of whether or not each school proposal has been approved no later than May 1 of the school year preceding the one for which the proposal was created.

(e) The State Board of Education shall evaluate the performance of all schools submitting proposals for a given school year during the summer following that school year, according to the terms of the local school proposal as approved by the state board. The state board shall uniformly apply the criteria for weighing the proposals to the local school proposals, and those schools which are deemed eligible for an award shall be notified no later than September 1 of the school year after the one for which the performance judged exemplary occurred. The state board may appoint an advisory evaluation team from outside the Department of Education to assist in the development and application of the criteria by which the proposals will be evaluated. Awards shall be made by the State Board of Education to each school through the local board for successful school projects no later than December 1 of the school year after the one for which the performance judged



exemplary occurred. The amount of the awards shall be distributed through local systems to schools judged exemplary by the State Board of Education according to the number of successful school projects, the size of each school, and the level of funding provided by the General Assembly. The decision of the local school's certificated personnel, in accordance with a process for decision making specified by the State Board of Education, will determine how the awards are spent or distributed at the school site.

(f) The state board shall specify guidelines to ensure the representation of all affected school level constituencies in the award distribution process. These guidelines will ensure that the proceeds in whole or in part may be given to faculty members in the form of bonuses or may be spent for the purpose of providing faculty sabbaticals, for instructional or other equipment, for staff development, for distribution to other school staff in the form of bonuses, or for any other expenditure deemed appropriate by the local school's certificated personnel.

(g) The State Board of Education shall submit a proposal for funding this pay-for-performance program for rewarding group productivity each year with its budget request. Awards made under this program are subject to appropriation by the General Assembly. (Code 1981, § 20-2-213.1, enacted by Ga. L. 1992, p. 3164, § 1.)

**Editor's notes.** — Ga. L. 1992, p. 3164, § 6, not codified by the General Assembly, provides: "Nothing contained in this Act shall affect any payment or allocation to any board of education of a local system as a result of bond proceeds authorized and

sold under the provisions of House Bill 1262, Supplemental Appropriations Bill, passed on February 10, 1992, and payment shall be made to said boards of education as provided for in said House Bill 1262."

## **20-2-214. Salary schedule for principals; supplements.**

The State Board of Education shall establish a salary schedule for school principals that includes a supplement amount for each principal. The amount of the supplement shall be based on the amount appropriated by the General Assembly for this purpose each year divided by the total weighted full-time equivalent count for the state. The amount for each principal shall be determined by multiplying the amount per weighted full-time equivalent count by the weighted full-time equivalent count for each school. Local school systems shall pay this supplement to each local school principal. (Code 1981, § 20-2-214, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1991, p. 1546, § 4; Ga. L. 2000, p. 618, § 38; Ga. L. 2001, p. 148, § 12.)

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and

may be cited as the 'A Plus Education Reform Act of 2000.'"

**20-2-214.1. High Performance Principals program.**

(a) The General Assembly finds that the driving force behind attracting quality teachers to a school and creating a culture of learning and respect in the school environment is the school leadership, and particularly, the school principal. The General Assembly further finds that teachers consider school leadership as one of the most important factors in creating good working conditions in a school environment. The General Assembly further finds that a school with strong leadership and teachers will be the most effective in improving and maintaining the academic success of its students.

(b) For purposes of this Code section, the term “Needs Improvement School” means a school that has not made adequate yearly progress for two or more consecutive years in the same subject, in accordance with the accountability system established pursuant to Article 2 of Chapter 14 of this title.

(c) The State Board of Education is authorized to establish a grant program to attract proven leaders in school settings to accept positions as principals in secondary schools in this state that have been identified as a Needs Improvement School by the State Board of Education, as defined in state board rules relating to the accountability system. For purposes of this Code section, these individuals shall be known as High Performance Principals. The grant program shall include funding, subject to appropriations by the General Assembly, for grants from the state board to local boards of education for salary supplements for High Performance Principals.

(d) The state board is authorized to develop rules and regulations to implement the grant program, including requiring reports, data, or other measures of accountability. The grant program shall provide that the sole criteria for designating and selecting individuals as High Performance Principals shall be data based evidence of the effectiveness of a proposed High Performance Principal in improving a low performing school or in taking an average or excellent performing school to higher achievement within the last five years. Notwithstanding this, the state board shall have the discretion, only in extenuating circumstances, to consider other criteria. The state board shall be authorized to establish and maintain a nonexclusive pool of preapproved eligible candidates for High Performance Principals for consideration by local school systems.

(e) An individual selected as a High Performance Principal shall be eligible for a one-year salary supplement, in an amount as determined by the state board and subject to appropriations by the General Assembly. An individual grant shall not exceed \$15,000.00 per year and such amount shall be awarded pursuant to state board rule based on

the relative recruitment need of that Needs Improvement School. The local school system may apply for up to two additional school years for renewal of the High Performance Principal designation for an individual, subject to appropriation. An individual selected as a High Performance Principal shall be required to enter into a contract with the local board, in accordance with Code Section 20-2-211, which shall include terms and conditions relating to the designation of High Performance Principal, as required by the state board. An individual shall be required to reimburse the local board for any moneys paid to him or her relating to the High Performance Principal designation if he or she does not comply with the terms of the contract relating to the High Performance Principal designation.

(f) The local board shall be required to submit reports, as required by the state board, which quantify the effectiveness of an individual designated as a High Performance Principal and his or her impact on the improvement of the school in the school year in which he or she was designated a High Performance Principal. The state board shall use the data in the reports as the primary factor in evaluating applications for renewal of a High Performance Principal designation, as provided for in subsection (e) of this Code section.

(g) Salary supplements received by a High Performance Principal pursuant to this Code section shall not be considered regular or earnable compensation for any purpose.

(h) Nothing in this Code section shall prohibit local boards of education from providing additional salary supplements and bonuses to any principal designated as a High Performance Principal. (Code 1981, § 20-2-214.1, enacted by Ga. L. 2006, p. 179, § 1/SB 468.)

### **20-2-215. “In loco parentis” status of aides and paraprofessionals.**

Classroom aides and paraprofessionals shall have, while performing assigned duties, the authority of “in loco parentis,” except for the administration of corporal punishment; provided, however, that such aides and paraprofessionals have at least the minimal training or experience, or both, prescribed by the Professional Standards Commission to have such authority and that such aides and paraprofessionals are under direct supervision of classroom teachers or other certificated professional personnel on a daily basis. Such aides and paraprofessionals shall have such authority both when the classroom teachers are present and when they are absent for justifiable purposes. Such purposes shall include planned release time and such activities as accompanying selected students to other locations or sites, instructing individual students or small groups at a location away from the



classroom, meeting with parents and guardians, planning instructional programs or lessons, participating in staff development activities, and other such education activities related to classroom instruction. The Professional Standards Commission shall have the authority to prescribe such requirements and standards as it deems necessary for the effective implementation of this Code section. (Code 1981, § 20-2-215, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1991, p. 1546, § 4; Ga. L. 1992, p. 2365, § 3.)

### RESEARCH REFERENCES

**Am. Jur. Proof of Facts.** — Loco Parentis Status, 28 POF2d 545.

#### **20-2-216. Substitute teachers.**

As a condition for receiving funds under this article, it shall be the duty of each local unit of administration to employ and to utilize the services of substitutes for teachers who are absent. It shall be the duty of the local unit of administration to employ substitutes, including retired teachers in accordance with Code Section 47-3-127, who possess valid teaching certificates issued by the Professional Standards Commission. If no person holding a valid teaching certificate is available for this purpose, the local unit of administration is authorized to employ the person who most closely meets the requirements for certification as a teacher and who is available to serve as a substitute, provided such person is closely supervised by the school principal or principal's designee. It shall be the duty of the commission to promulgate and adopt rules, regulations, and policies establishing classes or categories of persons, in order of descending priority, who most closely meet requirements for certification within this state. Nothing contained in this Code section shall prevent the local governing board or its executive officer from refusing to employ as a substitute teacher one who, in the discretion of the board, would be detrimental to the education of the students provided for by this article. For purposes of this Code section, certificated substitute teachers shall not be considered part-time personnel pursuant to Code Section 20-2-212. Salaries for substitute teachers shall be set by the local boards of education. (Code 1981, § 20-2-216, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1988, p. 612, § 11; Ga. L. 1991, p. 1546, § 4.)

#### **20-2-217. Professional and staff development stipends.**

The State Board of Education is authorized and directed to devise a program to provide professional and staff development stipends sufficient to allow eligible licensed personnel, paraprofessionals, and aides to participate in development programs which will enable such employ-

ees to increase their education pertaining to their job classification or to obtain appropriate degrees to become certified teachers. Such stipends shall be provided to individuals on a reimbursable basis on a state approved schedule. The State Board of Education shall be authorized to require the local professional and staff development plan required under Code Section 20-2-232 to include professional and staff development for licensed personnel, paraprofessionals, aides, and education secretaries before state funding for the purposes of this Code section will be made available to a local system. As used in this Code section, the term "paraprofessional" shall be defined as provided in Code Section 20-2-204. (Code 1981, § 20-2-217, enacted by Ga. L. 1990, p. 1254, § 1; Ga. L. 1991, p. 1546, § 4; Ga. L. 2009, p. 8, § 20/SB 46.)

**20-2-218. Duty-free lunch period; exchange of lunch period for compensation or other benefit; length of school day not affected; exemption for extenuating circumstances; funding.**

(a) Every teacher who is employed in grades kindergarten through five for a period of time of more than one-half of the class periods of the regular school day shall be provided a daily lunch period of not less than 30 consecutive minutes, and such employee shall not be assigned any responsibilities during this lunch period. Such lunch period shall be included in the number of hours worked, and no local board of education shall increase the number of hours to be worked by an employee as a result of such employee's being granted a lunch period under the provisions of this Code section. This duty-free lunch period shall not be calculated under any circumstances as a part of any daily planning period or other noninstructional time.

(b) Nothing in this Code section shall be construed to prevent any teacher from exchanging that teacher's lunch period for any compensation or benefit mutually agreed upon by the employee and the local superintendent of schools or such superintendent's agent, except that a teacher and the superintendent or agent may not agree to terms which are different from those available to any other teacher granted rights under this Code section within the individual school or to terms which in any way discriminate among such teachers within the individual school.

(c) The implementation of this Code section may not result in a lengthened school day.

(d) If necessary where due to extreme economic conditions or an unforeseen and unavoidable personnel shortage, a local unit of administration may require a teacher otherwise entitled to a duty-free lunch period to supervise students during such lunch period but for no more than one day in any school week.

(e) Notwithstanding any of the foregoing provisions of this Code section to the contrary, nothing in this Code section shall require the General Assembly to appropriate funds for the implementation of the duty-free lunch program; provided, however, that any such funds appropriated for this purpose shall be used by local school systems for duty-free lunch periods for classroom teachers in grades kindergarten through five. (Code 1981, § 20-2-218, enacted by Ga. L. 1991, p. 1630, § 2; Ga. L. 1992, p. 6, § 20; Ga. L. 2000, p. 618, § 39; Ga. L. 2005, p. 60, § 20/HB 95.)

**Editor’s notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

JUDICIAL DECISIONS

**Rule restricting teachers from leaving the school campus during the duty-free lunch period** is not in conflict with O.C.G.A. § 20-2-218. *Griffin-Spalding County Sch. Sys. v. Daniel*, 215 Ga. App. 567, 451 S.E.2d 480 (1994).

**20-2-219. Payroll deduction services provided by local units of administration.**

(a) It is affirmed that a local unit of administration may, in its discretion, provide payroll deduction services to any organization, association, or corporation which the local unit of administration determines provides a tangible benefit to the school system or to any of its employees if such organization, association, or corporation has among its objectives educational, charitable, classroom instructional, legislative, legal, or professional development activities related to promoting and enhancing the welfare of the education profession and public school students and employees.

(b) Subject to the provisions of this Code section, it is affirmed that any local unit of administration is authorized to deduct from the salaries or wages of its employees amounts designated by the employee as contributions, dues, or other specifically identified moneys to any such organization, association, or corporation as provided for in subsection (a) of this Code section.

(c) No deduction shall be made under this Code section without the express written consent of the employee. (Code 1981, § 20-2-219, enacted by Ga. L. 1992, p. 1501, § 1.)

**20-2-220. Limitations upon decreases in local salary supplements for school bus drivers and food service managers or employees.**

In any fiscal year in which school bus drivers or full-term school food service managers or food service employees receive any increase in



state funds in their salaries, a local unit of administration shall not decrease any local salary supplement for such personnel below the local supplement amount received in the immediately preceding fiscal year by those personnel of that local unit of administration unless such local unit of administration has conducted at least one public hearing regarding such decrease, notice of which hearing the local unit shall cause to be published in the legal organ of the county which is the legal situs of such local unit one time at least seven days prior to the date such hearing is to be held. (Code 1981, § 20-2-220, enacted by Ga. L. 1994, p. 782, § 2.)

**20-2-221. Furlough days to be on Monday or Friday or in conjunction with holidays.**

In the event that a local school system furloughs teachers and other school personnel during any school year, such furlough day shall be on a Monday or Friday or in conjunction with a holiday, unless the local board of education provides otherwise. (Code 1981, § 20-2-221, enacted by Ga. L. 2012, p. 890, § 1A/SB 153.)

**Effective date.** — This Code section became effective July 1, 2012.

PART 7

STAFF DEVELOPMENT

**Editor's notes.** — Ga. L. 1987, p. 1169, § 1, effective July 1, 1987, transferred and redesignated the provisions of former Part 9 of this article, except for Code Section 20-2-251 which was repealed, as this part. Ga. L. 1987, p. 1169, § 1 also transferred and redesignated the former provisions of this part as present Part 8 of this article. The table below indicates the present location of those redesignated Code sections:

| Former<br>Code Section | Present<br>Code Section |
|------------------------|-------------------------|
| 20-2-230               | 20-2-240                |
| 20-2-231               | 20-2-241                |

| Former<br>Code Section | Present<br>Code Section |
|------------------------|-------------------------|
| 20-2-232               | 20-2-242                |
| 20-2-233               | 20-2-243                |
| 20-2-250               | 20-2-230                |
| 20-2-251               | Repealed                |
| 20-2-252               | 20-2-231                |
| 20-2-253               | 20-2-232                |

**Administrative rules and regulations.** — Professional development opportunities, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Chapter 160-3-3.

**20-2-230. Programs.**

(a) All public school officials and professional personnel certificated by the Professional Standards Commission shall be provided the opportunity to continue their development throughout their profes-

sional careers. The primary purpose of the staff development sponsored or offered by local units of administration and the Department of Education shall be the implementation of this policy. Two additional purposes of such staff development programs shall be to adopt into general practice the findings of scientifically designed research which has been widely replicated, particularly as it relates to teacher and school effectiveness, and to address professional needs and deficiencies identified during the process of objective performance evaluations.

(b)(1) The State Board of Education shall adopt a training program for members of local boards of education by July 1, 2011. The State Board of Education may periodically adopt revisions to such training program as it deems necessary.

(2) Within three months of adoption by the State Board of Education of a training program pursuant to paragraph (1) of this subsection, each local board of education and each governing board of other local units of administration shall adopt a training program for members of such boards that includes, at a minimum, such training program and requirements established by the State Board of Education pursuant to paragraph (1) of this subsection. Each local board of education shall incorporate any revisions adopted by the State Board of Education to the training program pursuant to paragraph (1) of this subsection within three months of adoption of such revisions.

(3) All boards of local units of administration are authorized to pay such board members for attendance at a required training program the same per diem as authorized by local or general law for attendance at regular meetings, as well as reimbursement of actual expenses for travel, lodging, meals, and registration fees for such training, either before or after such board members assume office. (Code 1981, § 20-2-250, enacted by Ga. L. 1985, p. 1657, § 1; Code 1981, § 20-2-230, as redesignated by Ga. L. 1987, p. 1169, § 1; Ga. L. 1988, p. 612, § 12; Ga. L. 1991, p. 1546, § 5; Ga. L. 1995, p. 304, § 4; Ga. L. 1996, p. 821, § 2; Ga. L. 1997, p. 1453, § 1; Ga. L. 2010, p. 452, § 10/SB 84.)

**The 2010 amendment**, effective July 1, 2010, rewrote subsection (b).

**Editor's notes.** — See the Editor's note under this heading at the beginning of

this part for information as to the redesignation of the former provisions of this Code section.

## OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1974, pp. 1045 and 1050, which were subsequently repealed but were succeeded by provisions

in this Code section, are included in the annotations for this Code section.

**State board may make grants to local systems to provide in-service teacher training.** — State Board of Ed-

ucation is fully authorized by law to make grants to local school systems for the purpose of enabling the local systems to provide in-service training for teachers in their employment. 1965-66 Op. Att’y Gen. No. 65-79 (decided under former law).

**State board may contract with private colleges and universities for**

**training.** — State Board of Education may contract with private colleges and universities to provide in-service training for teachers and other local school system personnel. 1977 Op. Att’y Gen. No. 77-46 (decided under Ga. L. 1974, pp. 1045 and 1050, as amended).

**20-2-231. Georgia Education Leadership Academy.**

Repealed by Ga. L. 2012, p. 358, § 13/HB 706, effective July 1, 2012.

**Editor’s notes.** — This Code section was based on Ga. L. 1985, p. 1657, § 1; Code 1981, § 20-2-231, as redesignated by

Ga. L. 1987, p. 1169, § 1; Ga. L. 2000, p. 618, § 40; Ga. L. 2001, p. 4, § 20; Ga. L. 2001, p. 873, § 6.

**20-2-232. Development of plan by local school system.**

Repealed by Ga. L. 2012, p. 358, § 14/HB 706, effective July 1, 2012.

**Editor’s notes.** — This Code section was based on Ga. L. 1985, p. 1657, § 1; Code 1981, § 20-2-232, as redesignated by

Ga. L. 1987, p. 1169, § 1; Ga. L. 1988, p. 1412, § 3.

PART 8

STATE BOARD OF EDUCATION

**Editor’s notes.** — Ga. L. 1987, p. 1169, § 1, effective July 1, 1988, transferred and redesignated the provisions of former Part 7 of this article as this part. Ga. L. 1987, p. 1169, § 1 also transferred and redesignated the former provisions of this part as present Part 9 of this article. The table below indicates the present location of those redesignated Code sections:

| Former<br>Code Section | Present<br>Code Section |
|------------------------|-------------------------|
| 20-2-230               | 20-2-240                |
| 20-2-231               | 20-2-241                |
| 20-2-232               | 20-2-242                |

| Former<br>Code Section | Present<br>Code Section |
|------------------------|-------------------------|
| 20-2-233               | 20-2-243                |
| 20-2-240               | 20-2-250                |
| 20-2-241               | 20-2-251                |
| 20-2-242               | 20-2-252                |
| 20-2-243               | 20-2-253                |
| 20-2-244               | 20-2-254                |

**Administrative rules and regulations.** — Local school board governance, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Regional Education Services, Sec. 160-5-1-.36.

**20-2-240. Powers and duties.**

The State Board of Education shall adopt and prescribe all rules, regulations, and policies required by this article and such other rules, regulations, and policies as may be reasonably necessary or advisable for proper implementation, enforcement, and carrying out of this article and other public school laws and for assuring a more economical and



efficient operation of the public schools of this state or any phase of public elementary and secondary education in this state. The state board shall establish and enforce standards for operation of all public elementary and secondary schools and local units of administration in this state so as to assure, to the greatest extent possible, equal and quality educational programs, curricula, offerings, opportunities, and facilities for all of Georgia's children and youth and for economy and efficiency in administration and operation of public schools and local school systems throughout the state. The state board shall have the power to perform all duties and to exercise all responsibilities vested in it by provisions of law for the improvement of public elementary and secondary education in this state, including actions designed to improve teacher and school effectiveness through research and demonstration projects. The state board shall have the power to take such actions as it deems necessary to ensure that the citizens have full awareness and knowledge relative to the costs, quality, and performance of the public elementary and secondary schools of this state. All rules, regulations, policies, and standards adopted or prescribed by the state board in carrying out this article and other school laws shall, if not in conflict therewith, have the full force and effect of law. (Code 1981, § 20-2-230, enacted by Ga. L. 1985, p. 1657, § 1; Code 1981, § 20-2-240, as redesignated by Ga. L. 1987, p. 1169, § 1; Ga. L. 2012, p. 358, § 15/HB 706.)

**The 2012 amendment**, effective July 1, 2012, deleted the subsection (a) designation; and deleted former subsection (b), which read: "The State Board of Education is authorized, after a reasonable attempt at consultation with the State School Superintendent, to organize and reorganize the Department of Education and the various offices, divisions, sections, and units thereof and to prescribe the

duties, functions, and operations of each at such times and in such manner as the state board may deem necessary or desirable for the more economical or effective organization, administration, or functioning of the department."

**Editor's notes.** — See the Editor's note at the beginning of this part for information as to the redesignation of the former provisions of this Code section.

## JUDICIAL DECISIONS

**Immunity from damages for discretionary rule promulgation.** — Since there were no allegations that the individual state education board members acted wilfully, maliciously, or corruptly in the promulgation of the board's rules and regulations, though subsequently declared to be unconstitutional, were clearly within the scope of the members' discretionary authority, it necessarily followed that members enjoyed governmental immunity from any liability for damages in

their individual capacities and that the trial court correctly granted summary judgment in the members' favor. *State Bd. of Educ. v. Drury*, 263 Ga. 429, 437 S.E.2d 290 (1993).

**Immunity of board members.** — Teachers who were denied renewable teaching certificates under invalidly promulgated regulations were not entitled to recover damages against individual board members who were acting within the members' discretionary authority and had

governmental immunity from liability for damages. *State Bd. of Educ. v. Drury*, 263 Ga. 429, 437 S.E.2d 290 (1993).

### OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the issues covered in the statutory provisions, opinions under Ga. L. 1937, pp. 896 and 897, Ga. L. 1974, pp. 1045 and 1085, and former Code Section 20-2-280, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

**State Board of Education may make policy** on many matters dealing with education and is not limited to decisions dealing with expenditures of money, public or otherwise. 2001 Op. Att'y Gen. No. 2001-5.

**State Board of Education has the right to decide with which associations** the agency wishes to be affiliated. 2001 Op. Att'y Gen. No. 2001-5.

**State Board of Education may determine as a policy matter that a newsletter is needed** and what the newsletter's content should be. To implement that policy, the board may provide direction to the State School Superintendent for staff implementation and may direct that funds be spent for that purpose. However, the board must make a reasonable attempt to consult with the superintendent before directing appropriate staff to carry out this function. 2001 Op. Att'y Gen. No. 2001-5.

**Chair of the State Board of Education has the authority to set the board's agenda** and may require employees of the Department of Education to provide information to or perform functions for the board, but must first make a reasonable attempt to consult with the State School Superintendent. 2001 Op. Att'y Gen. No. 2001-5.

**Individual members of the State Board of Education may prepare draft rules** without input from the Department of Education. 2001 Op. Att'y Gen. No. 2001-5.

**State board may not hire own staff.** — State Board of Education is without the requisite statutory authority either to hire

the board's own staff or to require the State School Superintendent to allocate a Department of Education employee to perform functions for the board. 1996 Op. Att'y Gen. No. 96-19.

**State board may require a lay advisory group's approval as to the textbooks the board selects**, provided that in so doing the board continues to exercise the board's own independent judgment and responsibility in making the final decisions concerning the textbook selection and does not in fact attempt to delegate the board's decision-making powers to the advisory committees. 1977 Op. Att'y Gen. No. 77-13 (decided under Ga. L. 1937, pp. 896 and 897).

**Authority of board to "organize" and "reorganize" department supersedes prior legislation.** — Authority of the State Board of Education to "organize" and "reorganize" the State Department of Education and the department's various divisions and offices supersedes prior legislation which provided for the creation of a division of "vocational education service" under a director possessed of specified statutory "qualifications." 1977 Op. Att'y Gen. No. 77-68 (decided under Ga. L. 1974, pp. 1045 and 1085).

**State board may condition continued state fiscal assistance on implementation of state established reading requirements.** — Although the State Board of Education does not have explicit authority to directly preclude a student in a local school district from progressing from one grade level to another if the child is not capable of reading in the higher grade level, the board may, as a condition of continued state fiscal assistance, require local boards of education to implement state board established reading requirements. 1975 Op. Att'y Gen. No. 75-63 (decided under Ga. L. 1974, pp. 1045 and 1085).

**Prohibition of nonnutritious food sales valid.** — State Board of Education policy which prohibits the sale of

nonnutritious foods from the beginning of the school day through the end of the last lunch period is valid. 1984 Op. Att’y Gen.

No. 84-52 (decided under former Code Section 20-2-280).

RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 66 et seq.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 98 et seq.

20-2-241. State School Superintendent.

(a) The State School Superintendent shall be the executive officer of the State Board of Education and the administrative chief executive officer of the Department of Education. The State School Superintendent is authorized to organize and reorganize the Department of Education and the various offices, divisions, sections, and units thereof and to prescribe the duties, functions, and operations of each at such times and in such manner as the State School Superintendent deems necessary or desirable for the more economical or effective organization, administration, or functioning of the department. He or she shall also be responsible for the administration and enforcement of this article and other school laws in accordance with such laws and with rules, regulations, policies, and standards adopted or prescribed by the state board for the implementation, administration, or enforcement of such laws.

(b) The State School Superintendent shall have the authority to employ persons to serve in the five senior staff positions within the Department of Education.

(c) The State School Superintendent shall have the authority to enter into contracts for the amount of \$50,000.00 or less on behalf of the Department of Education. (Code 1981, § 20-2-231, enacted by Ga. L. 1985, p. 1657, § 1; Code 1981, § 20-2-241, as redesignated by Ga. L. 1987, p. 1169, § 1; Ga. L. 1996, p. 167, § 3.)

**Editor’s notes.** — See the Editor’s note at the beginning of this part for information as to the redesignation of the former provisions of this Code section.

Ga. L. 1996, p. 167, which amended this

Code section, provided in § 1, not codified by the General Assembly: “This Act shall be known and may be cited as the ‘Education Reform Act of 1996.’”

OPINIONS OF THE ATTORNEY GENERAL

**Effect of 1996 amendment.** — State School Superintendent has the sole authority to organize and reorganize the Department of Education, while the State

Board of Education retains the Board’s authority to provide general direction to, and inspect the performance of, the Department. 1996 Op. Att’y Gen. No. 96-12.



## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 66 et seq.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 98 et seq.

**20-2-242. Local school systems; local units of administration; local governing bodies.**

The political subdivisions governed by county, independent, and area boards of education in this state established pursuant to law shall be known as “local school systems” for the purposes of this article, except where other specific provisions are made. All local school systems, boards of control of regional educational service agencies established pursuant to Code Section 20-2-272, and any other local or regional public education agencies established pursuant to law shall be known as “local units of administration” for purposes of this article, except education agencies governed or regulated by boards of other state agencies or except where other specific provisions are made. The members and executive officers of local governing boards shall comply with, execute, and enforce all laws and all policies, rules, standards, and regulations adopted by the State Board of Education pursuant to this article in order to be eligible to receive state funds under this article. If a local board of education fails to comply with any provision of this article, compliance shall be enforced pursuant to Code Section 20-2-243. The qualifications, manner and time of selection, tenure, powers and duties, and state compensation, if provided for, shall be prescribed by law for all members and executive officers of local governing boards. Specifically, however, each local board of education shall be responsible for ensuring that:

(1) The instructional programs authorized pursuant to Part 3 of this article and the uniformly sequenced core curriculum authorized pursuant to Part 2 of this article are fully and effectively implemented;

(2) Locally adopted and offered enrichment programs, courses, and activities are properly planned, implemented, monitored, and evaluated to ensure the highest quality possible; and

(3) Information is distributed to the public on a continuing basis relative to the costs, quality, and performance of the system’s elementary and secondary schools. (Code 1981, § 20-2-232, enacted by Ga. L. 1985, p. 1657, § 1; Code 1981, § 20-2-242, as redesignated by Ga. L. 1987, p. 1169, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1992, a comma was inserted following “compensation” in

the next to the last sentence of the introductory language.

**Editor’s notes.** — See the Editor’s note

at the beginning of this part for information as to the redesignation of the former provisions of this Code section.

JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, a decision under former Code 1933, Ch. 32-6, which was subsequently repealed but was succeeded by provisions in this Code section, is included in the annotations for this Code section.

**Board without authority to delegate duties without legislative author-**

**ization.** — Without specific legislative authorization, a school board has no authority, by contract or otherwise, to delegate to others the duties placed on the board by the Constitution and laws of Georgia. *Chatham Ass'n of Educators v. Board of Pub. Educ.*, 231 Ga. 806, 204 S.E.2d 138 (1974) (decided under former Code 1933, Ch. 32-6).

OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the statutory provisions, opinions under former Code 1933, Ch. 32-6, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Chapter impliedly limits term of contractual employment of county**

**board employees to one school year.** 1963-65 Op. Att'y Gen. p. 79 (decided under former Code 1933, Ch. 32-6).

**Georgia Military College is not a "local school system"** and is ineligible to be a member of a regional educational service agency. 1997 Op. Att'y Gen. No. U97-30.

RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 66 et seq.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 124 et seq.

20-2-243. Withholding funds for failure to comply with this article.

In the event a local unit of administration shall fail to comply with any provision of this article or other school laws; any provision of rules, regulations, policies, standards, or requirements established by the State Board of Education pursuant to this article; or the terms of any contract with the state board, the state board may, in its discretion, withhold from the local unit all or any part of the state contributed Quality Basic Education Program funds allotted to the local unit under this article until full compliance is made by the local unit. The state board shall, before withholding funds, notify the local unit of its intention and state the reasons for such action. The governing board of the local unit shall be entitled to a hearing before funds are withheld, provided the local board requests a hearing within 30 days from receipt of notification. If the local governing board feels itself aggrieved by the final decision of the state board following the hearing, the local board shall have the right to obtain judicial review of the decision, on the

record made before the state board, by filing an appeal in the superior court of the county of the local unit affected. The appeal shall plainly specify the decision being challenged, the questions in dispute, the decision of the state board, the relief sought by the local board, and the contentions of the local board. The appeal shall be based upon the record as a whole established at the time of the hearing before the state board. A transcript of the testimony and other evidence adduced before the state board at the time of such hearing shall be prepared and certified as true and correct by the State School Superintendent and filed in the court within 30 days after date of service of a copy of the appeal upon the superintendent or within such other time as the court may allow. The decision of the state board on appeal shall not be set aside if based upon any substantial evidence in the record, considering the record as a whole. The court may, in its discretion, whether or not prayed for in the appeal, remand the matter for future proceedings or findings on such directions or terms as may be specified in the order of the court. Proceedings for review of the final judgment of the court shall follow the same course which is now or may hereafter be prescribed for other civil actions in the superior court. No funds shall be withheld until all appeals are exhausted. Any local unit of administration which feels aggrieved by any decision of the state board shall have the right to appeal under the provisions of this Code section. (Code 1981, § 20-2-233, enacted by Ga. L. 1985, p. 1657, § 1; Code 1981, § 20-2-243, as redesignated by Ga. L. 1987, p. 1169, § 1.)

**Editor's notes.** — See the Editor's note at the beginning of this part for information as to the redesignation of the former provisions of this Code section.

### OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the statutory provisions, opinions under former Ga. L. 1974, pp. 1045 and 1085, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

**State board may condition continued state fiscal assistance on implementation of state established reading requirements.** — Although the State Board of Education does not have explicit

authority to directly preclude a student in a local school district from progressing from one grade level to another if the child is not capable of reading in the higher grade level, the board may, as a condition of continued state fiscal assistance, require local boards of education to implement state board established reading requirements. 1975 Op. Att'y Gen. No. 75-63 (decided under former Ga. L. 1974, pp. 1045 and 1085).

### 20-2-244. Waivers to improve student performance; no application to charter schools; requirements for application for waiver; period of waiver; blanket waivers.

(a) The State Board of Education is authorized to waive specifically identified state rules, regulations, policies, and procedures, or provi-



sions of this chapter, upon the request of a local school board and in accordance with this Code section. The goal for each waiver shall be improvement of student performance.

(b) The State Board of Education is not authorized to waive any federal, state, and local rules, regulations, court orders, and statutes relating to civil rights; insurance; the protection of the physical health and safety of school students, employees, and visitors; conflicting interest transactions; the prevention of unlawful conduct; any laws relating to unlawful conduct in or near a public school; any reporting requirements pursuant to Code Section 20-2-320 or Chapter 14 of this title; the requirements of Code Section 20-2-211.1; or the requirements in subsection (c) of Code Section 20-2-327. A school or school system that has received a waiver shall remain subject to the provisions of Part 3 of Article 2 of Chapter 14 of this title, the requirement that it shall not charge tuition or fees to its students except as may be authorized for local boards by Code Section 20-2-133, and shall remain open to enrollment in the same manner as before the waiver request.

(c) The provisions of this Code section shall not apply to charter schools.

(d) The board shall require a written application for a waiver that shall include, at a minimum:

(1) Identification of the specific state rules, regulations, policies, and procedures, or provisions of this chapter that are requested for waiver;

(2) A description of the policies and procedures the school or school system shall substitute for the waived state rules, regulations, policies, and procedures, or provisions;

(3) A description of how the proposed waiver will improve student performance;

(4) A description of the students who will be affected by the proposed waiver, including their estimated number, current performance, grade level, and any common demographic traits;

(5) A list of schools by name that will be affected by the proposed waiver, and a description of each school, including current performance, grade levels, and demographic traits of the students of each such school;

(6) Methods for collection of data, and for measuring and evaluating any change in student performance resulting from the proposed waiver;

(7) The period of time for which the proposed waiver is requested and the proposed starting date; and

(8) A resolution from the local school board approving the waiver request.

(e) The State Board of Education may grant or deny a waiver request, or grant a waiver request subject to specified modifications in the waiver request.

(f) A waiver may be granted in accordance with this Code section for any period of time not to exceed five years. The State Board of Education shall require reports regarding the effect of the waiver at least annually, and may require more frequent reports if necessary to monitor the effect of the waiver effectively. The State Board of Education shall report annually to the General Assembly regarding the waivers granted, the effect of each waiver, and any recommendations for legislative changes generated by successful waivers.

(g) On and after July 1, 2008, except as provided for in subsection (h) of this Code section, the State Board of Education shall not authorize any waivers or variances pursuant to this Code section to any local school system for the following:

(1) Class size requirements in Code Section 20-2-182; provided, however, that the state board shall be authorized to waive class size requirements pursuant to this Code section on and after July 1, 2008, in the event that a local school system can demonstrate a hardship pursuant to a waiver request;

(2) Expenditure controls in Code Section 20-2-171 and categorical allotment requirements in Article 6 of this chapter;

(3) Certification requirements in Code Section 20-2-200; or

(4) Salary schedule requirements in Code Section 20-2-212.

A local school system which has received a waiver or variance pursuant to this Code section prior to entering into a contract pursuant to Article 4 of this chapter shall be required to include such waiver or variance in such contract.

(h) The State Board of Education shall be authorized to provide a blanket waiver or variance of the class size requirements in Code Section 20-2-182 for all local school systems for a specified school year in the event that a condition of financial exigency occurs, as determined by the state board. For purposes of this subsection, "financial exigency" means circumstances which cause a shortfall in state appropriations and local revenue for operation of local school systems as compared with projected expenditures over the same period and such shortfall would have a material adverse effect on the operation of public schools. Subsections (c) and (f) of this Code section shall not apply to blanket waivers or variances issued pursuant to this subsection. (Code 1981,

§ 20-2-244, enacted by Ga. L. 2004, p. 107, § 6; Ga. L. 2008, p. 82, § 3/HB 1209; Ga. L. 2010, p. 158, § 5/HB 908; Ga. L. 2010, p. 237, § 1E/HB 1079; Ga. L. 2011, p. 635, § 8/HB 186.)

**The 2010 amendments.** — The first 2010 amendment, effective May 20, 2010, inserted “except as provided for in subsection (h) of this Code section,” in the introductory paragraph of subsection (g); and added subsection (h). The second 2010 amendment, effective July 1, 2010, in subsection (b), in the first sentence, deleted “or” following “public school;” near the end and added “; or the requirements of Code Section 20-2-211.1” at the end.

**The 2011 amendment,** effective May 13, 2011, in subsection (b), in the first sentence, deleted “or” following “Chapter 14 of this title;,” and added “; or the requirements in subsection (c) of Code Section 20-2-327” at the end.

**Editor’s notes.** — Ga. L. 2011, p. 635, § 1/HB 186, not codified by the General Assembly, provides: “The General Assembly finds that:

“(1) Our state’s long-term prosperity depends on supporting an education system that is designed to prepare our students for a global economy;

“(2) High school students and parents must understand that they have options for career pathway programs of study that join a college-ready academic core with quality career, technical, and agricultural education studies that result in a high school diploma and preparation for success in advanced training, an associate’s degree, a baccalaureate degree, and a career;

“(3) Local school systems must provide every student with choices that are academically rigorous and aligned to opportunities in high-demand, high-skill, high-wage career fields and to postsecondary career and technical pathways leading to advanced credentials or degrees;

“(4) The State Board of Education, the Board of Regents of the University System of Georgia, and the Board of Technical and Adult Education must work together so that academic courses that are embedded

within career, technical, and agricultural education courses (CTAE) are given appropriate academic credit at the high school level and recognized at the postsecondary level;

“(5) Teachers should be provided with professional development opportunities that enforce the academically rigorous standards in relevant, project based coursework;

“(6) High school students should clearly understand the options for dual high school and postsecondary credit, and the state should properly fund these options;

“(7) Every state education agency, postsecondary institution, and local school system should provide all high school students with opportunities for accelerated learning through dual credit coursework leading to at least six postsecondary credits and have as a collective goal to graduate every student with postsecondary credit;

“(8) Georgia’s strategic industries must be partners in our public education system (secondary and postsecondary) so that they are assured that our high school graduates are prepared for success in the workforce;

“(9) Georgia’s public education system must incorporate many different types of assessments and certificates into their programs so that a student’s skill level is assessed and that it also has meaning to them for postsecondary and career success; and

“(10) Georgia’s students must understand that a high school diploma and some form of postsecondary credential are key to success in the workforce and earning a family living wage.”

**Law reviews.** — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 115 (2011). For article, “Education: Elementary and Secondary Education,” see 28 Ga. St. U. L. Rev. 115 (2011).



PART 9

GRANTS FOR EDUCATIONAL PROGRAMS

**Editor’s notes.** — Ga. L. 1987, p. 1169, § 1, effective July 1, 1987, transferred and redesignated the provisions of former Part 8 of this article as this part. Ga. L. 1987, p. 1169, § 1 also transferred and redesignated the former provisions of this part, except for Code Section 20-2-251 which was repealed, as present Part 7 of this article. The table below indicates the present location of those redesignated Code sections:

| Former<br><u>Code Section</u> | Present<br><u>Code Section</u> |
|-------------------------------|--------------------------------|
| 20-2-241                      | 20-2-251                       |
| 20-2-242                      | 20-2-252                       |
| 20-2-243                      | 20-2-253                       |
| 20-2-244                      | 20-2-254                       |
| 20-2-250                      | 20-2-230                       |
| 20-2-251                      | Repealed                       |
| 20-2-252                      | 20-2-231                       |
| 20-2-253                      | 20-2-232                       |

| Former<br><u>Code Section</u> | Present<br><u>Code Section</u> |
|-------------------------------|--------------------------------|
| 20-2-240                      | 20-2-250                       |

**20-2-250. Projects to improve effectiveness.**

(a) The State Board of Education shall provide grants to qualified local units of administration for the purpose of improving the effectiveness of an educational program or service within a school, a cluster of schools, system wide, or regionally, subject to appropriation by the General Assembly. The state board shall appoint a review panel to evaluate all submitted proposals and submit appropriate recommendations to the state board for funding based upon criteria specified within this Code section. The criteria for awarding such a grant shall include the potential for widespread adoption of such improvement by other public schools or local units of administration in the state, the potential to which the project is likely to result in the proposed improvement, the quality of the proposed project design, the reasonableness of the costs involved in conducting the project, and such other criteria which the state board may deem appropriate and necessary. The state board shall have the authority to establish a list of educational programs and services for which project proposals will be considered or the state board shall have the authority to consider unsolicited project proposals concerning any educational program or service needing improvement, or both. Local units of administration shall be required to expend local funds for a portion of the costs of projects authorized under this subsection. The amount of such local funds shall be based upon the ability of a local unit to pay a share of the cost relative to the ability of other local units in the state to pay their shares of such cost. Such local funds shall be in excess of the local funds required for the local five mill share pursuant to Code Section 20-2-164 and in excess of the local funds required as a portion of the costs for other grant programs authorized under this article. The state board is further authorized to reduce the

amount of a local grant request through negotiation with a local governing board and award the difference to an additional local unit of administration which has submitted an unfunded, qualified project.

(b) The State Board of Education shall provide grants to qualified local units of administration for the purpose of assisting other local units in their efforts to adopt an effective improvement of an educational program or service, subject to appropriation by the General Assembly. Only those local units of administration which have completed innovation programs under the process defined in subsection (a) of this Code section, regardless of fund source, and such innovation programs have been sufficiently validated to demonstrate program effectiveness, may be considered for funding on a priority basis. The criteria for awarding such a grant shall be that the local unit of administration was previously instrumental in the development or adoption of such effective improvement, that the improvement has the potential for widespread adoption by other local units or schools in other local units, that the improvement contributes to the increased effectiveness or efficiency of an educational program or service sufficiently to warrant the proposed project costs, and such other criteria which the state board may deem appropriate and necessary. Such a grant shall not require that any portion of such project's cost be paid by the qualified local unit of administration receiving such grant.

(c) The State Board of Education shall provide grants to qualified local units of administration for the purpose of adopting effective improvements of educational programs or services, subject to appropriation by the General Assembly. The criteria for awarding such a grant shall be that the proposed improvement of an educational program or service has been proven to be effective elsewhere, the proposed improvement contributes to the increased effectiveness or efficiency of an educational program or service sufficiently to warrant the proposed project's cost, and such other criteria which the state board may deem appropriate and necessary. All funds for such adoption projects shall be for costs in excess of costs for which funds have been otherwise provided by the provisions of this article. Local units of administration shall be required to expend local funds for a portion of the cost of projects authorized under this subsection. The amount of such local funds shall be based upon the ability of a local unit to pay a share of the cost relative to the ability of other local units in the state to pay their share of such cost. Such local funds shall be in excess of the local funds required for the local five mill share pursuant to Code Section 20-2-164 and in excess of the local funds required as a portion of the costs for other grant programs authorized under this article.

(d)(1) In order to better address the needs of students at risk of failing to complete their education, the State Board of Education

shall approve pilot projects that allow schools, clusters of schools, or school systems to decategorize funds received under Code Section 20-2-161. The state board shall appoint an interdisciplinary review panel consisting of students, parents, educators, and representatives from business, the community, the Department of Human Services, and the Department of Behavioral Health and Developmental Disabilities to evaluate all submitted proposals and to submit appropriate recommendations to the state board.

(2) Pilot projects must meet the following criteria:

(A) Address the needs of at-risk students who meet two or more of the criteria in the definition of the at-risk student as approved by the State Board of Education;

(B) Develop a plan for such a pilot project using an interdisciplinary committee composed of students, parents, educators, and representatives from business, the community, the Department of Human Services, the Department of Behavioral Health and Developmental Disabilities, and others as appropriate;

(C) Ensure that the plan for the pilot project becomes a component of the local strategic plan;

(D) Provide for a program evaluation that specifies the goals of the program, the means to achieve those goals, the reasons for any decategorization or combining of program earnings to carry out those means, and objective and other criteria to be met which will determine the success or failure of the new programs;

(E) No funds may be expended for any program or service explicitly excluded from the full-time equivalent count in subsection (a) of Code Section 20-2-160, except that such funds will be expended in conformity with the requirements for expenditures of direct instructional costs under Code Section 20-2-167. Any local plan approved by the board to combine program earnings for the purpose of providing programs for at-risk students under this subsection must also conform with the expenditure controls under Code Section 20-2-167 as modified by the new program categories described in the local system's proposal to the board. In no event will the aggregate funds expended for direct instructional costs be a lower amount than would have been required under the original formula calculations and expenditure requirements; and

(F) No funds may be expended for transitional programs, such as transitional kindergarten or first grade.

(3) The state board shall give priority to proposed pilot projects that focus on interagency cooperation and the joint provision of services.



(4) All pilot projects shall be reviewed annually by the state board to ensure that they are meeting the goals and objectives outlined in their plan. Pilot projects that are no longer achieving their goals and objectives shall be discontinued by the state board.

(5) The pilot projects shall report annually to the Appropriations Committees of the House of Representatives and the Senate, the House Education Committee, and the Senate Education and Youth Committee. (Code 1981, § 20-2-240, enacted by Ga. L. 1985, p. 1657, § 1; Code 1981, § 20-2-250, as redesignated by Ga. L. 1987, p. 1169, § 1; Ga. L. 1991, p. 1630, § 3; Ga. L. 2000, p. 618, § 96; Ga. L. 2009, p. 303, § 8/HB 117; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2010, p. 286, § 16/SB 244.)

**The 2010 amendment**, effective July 1, 2010, in the second sentence of paragraph (d)(1), deleted “and” preceding “the Department” and inserted “, and the Department of Behavioral Health and Developmental Disabilities” near the end; and inserted “the Department of Behavioral Health and Developmental Disabilities,” near the end of subparagraph (d)(2)(B).

**Editor’s notes.** — See the Editor’s notes at the beginning of this part for information as to the redesignation of the former provisions of this Code section.

Ga. L. 1991, p. 1630, § 6, not codified by the General Assembly, provides that the amendment to this Code section by that

Act, effective July 1, 1991, is applicable to the 1992-1993 school year.

Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

Ga. L. 2009, p. 303, § 20/HB 117, not codified by the General Assembly, provides that: “This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act.”

## OPINIONS OF THE ATTORNEY GENERAL

**Rental of school property at less than fair market rental.** — Allowing a sectarian organization to generate income through the use of school property under a lease arrangement at less than the fair

market rental rate would violate the “indirect aid” language of Ga. Const. 1983, Art. I, Sec. II, Para. VII. 1988 Op. Att’y Gen. No. U88-20.

### 20-2-251. Demonstration programs.

Reserved. Repealed by Ga. L. 2012, p. 358, § 16/HB 706, effective July 1, 2012.

**Editor’s notes.** — Ga. L. 1987, p. 1169, § 1, effective July 1, 1987, repealed the former Code section concerning a minimum program weight computation. The former Code section was enacted by Ga. L. 1985, p. 1657, § 1. For present provisions

concerning program weights, see Part 5 of this article.

This Code section was based on Ga. L. 1985, p. 1657, § 1; Code 1981, § 20-2-251, as redesignated by Ga. L. 1987, p. 1169, § 1; Ga. L. 1992, p. 1332, § 1.

**20-2-252. Electronic technology.**

Reserved. Repealed by Ga. L. 2012, p. 358, § 17/HB 706, effective July 1, 2012.

**Editor's notes.** — This Code section was based on Ga. L. 1985, p. 1657, § 1; Code 1981, § 20-2-252, as redesignated by Ga. L. 1987, p. 1169, § 1; Ga. L. 1996, p. 1603, § 6; Ga. L. 2000, p. 618, § 96.

**20-2-253. Achievement grants.**

Reserved. Repealed by Ga. L. 2012, p. 358, § 18/HB 706, effective July 1, 2012.

**Editor's notes.** — This Code section was based on Ga. L. 1985, p. 1657, § 1; Code 1981, § 20-2-253, as redesignated by Ga. L. 1987, p. 1169, § 1; Ga. L. 1995, p. 1340, § 1.

**20-2-254. Educational research.**

Reserved. Repealed by Ga. L. 2012, p. 358, § 19/HB 706, effective July 1, 2012.

**Editor's notes.** — This Code section was based on Ga. L. 1985, p. 1657, § 1; Code 1981, § 20-2-254, as redesignated by Ga. L. 1987, p. 1169, § 1.

**20-2-255. Petitions for charter school status.**

Repealed by Ga. L. 1998, p. 1080, § 1, effective July 1, 1998.

**Editor's notes.** — This Code section was based on Ga. L. 1993, p. 1440, § 1; Ga. L. 1995, p. 307, § 1; Ga. L. 1996, p. 6, § 20.

**20-2-256. Joint after-school programs for at-risk students.**

(a) As used in this Code section, the term:

(1) "After-school program" means any academic program conducted after regular school hours to serve only:

(A) Students who have previously dropped out of school;

(B) Students who are in a regular day time school who have previously failed courses; or

(C) A combination of students described in subparagraph (A) of this paragraph and subparagraph (B) of this paragraph.

(2) "Course" means an instructional course for which a program count is permissible under Code Section 20-2-160.

(3) "FTE" or "full-time equivalency" means the program cost obtained under the method described in paragraph (2) of subsection (b) of Code Section 20-2-160.

(4) "Student" means a person who is otherwise eligible to be included in a program count under Code Section 20-2-160.

(b) Four or more local school systems which jointly establish any after-school program for at-risk students shall be eligible to receive a state grant, not to exceed \$225,000.00 per year, which is equal to the amount of direct instructional costs which would be earned by students described in subparagraph (a)(1)(B) of this Code section if they were enrolled in equivalent courses in the remedial education program during the school day and counted as FTE students under the method described in paragraph (2) of subsection (b) of Code Section 20-2-160. No student in the after-school program who is actually included in a regular after-school FTE program count pursuant to Code Section 20-2-160 may be counted in determining the amount of a grant under this Code section.

(c) The FTE count for students described in subparagraph (a)(1)(A) of this Code section shall be funded at the weight and teacher-student ratio specified for alternative education programs in paragraph (18) of subsection (b) of Code Section 20-2-161.

(d) The State Board of Education is directed to prescribe a method of determining full-time equivalency of such programs in keeping with paragraph (2) of subsection (b) of Code Section 20-2-160 and shall calculate the funds needed for such programs as part of its annual budget request. (Code 1981, § 20-2-256, enacted by Ga. L. 1995, p. 240, § 1; Ga. L. 1998, p. 1370, § 1; Ga. L. 2002, p. 1399, § 1.)

### **20-2-257. Grants for driver education courses for secondary school students.**

The State Board of Education shall provide public secondary schools and local school systems with grants, subject to appropriation by the General Assembly and pursuant to applications made at the discretion of such systems. The purpose of such grants shall be to support motor vehicle driver education courses and programs for secondary school students. The amount of such grants shall be reflective of the most recent counts of age 15, 16, and 17 year old secondary school students in the public schools or local school systems. The public schools or local school systems receiving such grants may expend these funds only for purposes of providing driver education courses or programs to secondary school students. Such courses or programs may be provided directly by the local school system or by contract with a private driver education school licensed by the Department of Driver Services. Such grants shall be supplemental to any other provision of state funds for such driver education courses or programs. The state board shall prescribe criteria, policies, and standards deemed necessary for the effective implemen-



tation of this Code section. (Code 1981, § 20-2-257, enacted by Ga. L. 1998, p. 1520, § 4; Ga. L. 1999, p. 81, § 20; Ga. L. 2010, p. 878, § 20/HB 1387.)

**The 2010 amendment,** effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted “the Department of Driver Services” for “Department of Public Safety” in the fifth sentence of this Code section.

**Cross references.** — The Driver Training School and Commercial Driver Training School License Act, T. 43, C. 13. Tax credit for private driver education courses of minors, § 48-7-29.5.

## **20-2-258. Funds for grant recipients; criteria for compacts between students, teachers and parents.**

The State Board of Education shall request funds sufficient to provide grants to qualified public elementary and secondary schools and local school systems, subject to appropriation by the General Assembly. The purpose of such grants shall be to encourage grant recipients to develop and implement written compacts among teachers, parents, and students. Such compacts shall be entered into voluntarily and shall describe the commitments made by the student, the student’s teacher, and the student’s parents to improve and enhance the student’s academic achievement. Grant recipients shall ensure that a compact is offered for each class in which a student is enrolled and that students and parents are invited to a conference with the teacher, within the first 30 days after enrollment, to discuss the terms of the compact. The state board shall prescribe criteria, policies, and standards deemed necessary for the effective implementation of this Code section. (Code 1981, § 20-2-258, enacted by Ga. L. 2000, p. 618, § 41.)

**Editor’s notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

## **20-2-259. Extended day program for students in grades nine through 12.**

The State Board of Education shall establish an extended day program for students in grades nine through 12. Subject to appropriation by the General Assembly, funding for extended day services shall be provided to local school systems through grants calculated as follows:

- (1) Divide the salary amount for an administrator, as calculated on a ten-month basis, by the base size for the high school general education program (9-12); and
- (2) Multiply the amount calculated in paragraph (1) of this Code section by the sum of the full-time equivalent program count for the high school general education program (9-12) and the vocational laboratory program (9-12).

Each year the state board shall request funds sufficient to provide for the development and supervision of an extended day program during the regular school year. (Code 1981, § 20-2-259, enacted by Ga. L. 2000, p. 618, § 42.)

**Editor’s notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

PART 10

CAPITAL OUTLAY FUNDS

**Administrative rules and regulations.** — School facilities and capital outlay management, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Chapter 160-5-4.

20-2-260. Capital outlay funds generally.

(a) It is declared to be the policy of the State of Georgia to assure that every public school student shall be housed in a facility which is structurally sound and well maintained and which has adequate space and equipment to meet each student’s instructional needs as those needs are defined and required by this article.

(b) As used in this Code section, the following words or terms shall have the following meanings:

(1) “Addition” refers to square footage of room floor space for instructional or other purposes added to an existing educational facility, whether physically connected thereto or a separate structure located on the same site.

(2) Reserved.

(3) “Capital outlay” includes, but is not necessarily limited to, expenditures which result in the acquisition of fixed assets, existing buildings, improvements to sites, construction of buildings, construction of additions to buildings, retrofitting of existing buildings for energy conservation, and initial and additional equipment and furnishings for educational facilities.

(4) “Construction project” refers to the construction of new buildings, additions or expansion of existing buildings, relocation of existing buildings or portions thereof, renovation or modernization of existing buildings or structures, and procedures and processes connected thereto, related to educational facilities.

(5) “Educational facilities” shall include buildings, fixtures, and equipment necessary for the effective and efficient operation of the program of public education required by this article, which, without

limiting the generality of the foregoing, shall include classrooms, libraries, rooms and space for physical education, space for fine arts, restrooms, specialized laboratories, cafeterias, media centers, building equipment, building fixtures, furnishings, related exterior facilities, landscaping and paving, and similar items which the State Board of Education may determine necessary. The following facilities are specifically excluded: swimming pools, tracks, stadiums, and other facilities or portions of facilities used primarily for athletic competition and the central and area administrative offices of local units of administration.

(6) "Educational facilities survey" is defined as a systematic study of present educational facilities and a five-year forecast of future needs.

(7) "Entitlement" refers to the maximum portion of the total need that may be funded in a given year.

(8) "Full-time equivalent student count" is defined as the average of the two full-time equivalent counts pursuant to subsection (d) of Code Section 20-2-160 for a school year.

(9) "Local funds" refers to funds available to local school systems from sources other than state and federal funds except any federal funds designed to replace local tax revenues.

(10) "Local school system's 1 percent local sales tax wealth" is defined as the funds in dollars generated or which could be generated during the year by a 1 percent sales tax.

(11) "Local wealth factor" is defined as the average of the property tax wealth factor and the sales tax wealth factor. The property tax wealth factor is determined by dividing the local school system's net equalized adjusted property tax digest per full-time equivalent student by the state-wide net equalized adjusted property tax digest per full-time equivalent student. The sales tax wealth factor is determined by dividing the local school system's 1 percent local sales tax wealth per full-time equivalent student by the state-wide 1 percent sales tax wealth per full-time equivalent student.

(12) "Net equalized adjusted property tax digest" is defined as the equalized adjusted property tax digest furnished pursuant to Code Section 48-5-274, reduced in accordance with paragraphs (1) and (2) of subsection (a) of Code Section 20-2-164.

(13) "Physical education facility" is defined as any facility which is designed for an instructional program in physical education and shall exclude any spectator stands, lobbies, public restrooms, concession areas, or space normally identified to serve only the interscholastic athletic program in which the school may participate.



(14) “Renovation” or “modernization” or both refers to construction projects which consist of the installation or replacement of major building components such as lighting, heating, air-conditioning, plumbing, roofing, electrical, electronic, or flooring systems; millwork; cabinet work and fixed equipment; energy retrofit packages; or room-size modifications within an existing facility, but excluding routine maintenance and repair items or operations.

(15) “Required local participation” is defined as the amount of funds which must be contributed by local school systems from local funds for each construction project.

(16) “Unhoused students” is defined as those students who are not housed in school facilities which are structurally sound with adequate space as defined by the state board.

(c) The State Board of Education shall adopt policies, guidelines, and standards, pursuant to Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” that meet the requirements specified in this Code section. The state board’s responsibilities shall include the following:

(1) To adopt policies, guidelines, and standards for the annual physical facility and real property inventory required of each local school system. This inventory shall include, but not be limited to: parcels of land; number of educational facilities; year of construction and design; size, number, and type of construction space; amount of instructional space in permanent and temporary buildings; designations for each instructional space in permanent and temporary buildings occupied by designated state approved instructional programs, federal programs, or local programs not required by the state; local property assessment for bond purposes; outstanding school bonds; and buildings and facilities not in use or rented or leased to individuals or other agencies of government, or used for other than instructional programs required by this article, each identified by its current use. Department of Education staff shall annually review, certify the accuracy of, and approve each local school system’s inventory;

(2) To adopt policies, guidelines, and standards for the educational facilities survey required of local school systems. The educational facilities survey shall be initiated by written request of a local board of education. The request may suggest the number of teams and the individuals constituting such teams to participate in the survey. However, it shall be the responsibility of the Department of Education to constitute the makeup of the necessary teams. Said teams shall exclude local residents; employees of the local board of education, the servicing regional educational services agency, and other

educational centers and agencies servicing the local board; and individuals deemed unacceptable by the local board. The state board shall establish and maintain qualification standards for participants of survey teams. Each educational facilities survey shall include, but not be limited to, an analysis of population growth and development patterns; assessment of existing instructional and support space; assessment of existing educational facilities; extent of obsolescence of facilities; and recommendations for improvements, expansion, modernization, safety, and energy retrofitting of existing educational facilities. The Department of Education staff shall review and certify as to the accuracy of each educational facilities survey. The state board shall approve or reject the recommendations of the survey team and shall establish appeal procedures for rejected surveys;

(3) To adopt policies, guidelines, and standards for educational facilities construction plans. Local school system facilities construction plans shall include, but not be limited to, a list of construction projects currently eligible for state capital outlay funds, if any; educational facilities projected for abandonment, if any; educational facilities projected as needed five years hence; proposed construction projects for modernization, renovation, and energy retrofitting; proposed construction projects for the purpose of consolidating small, inefficient educational facilities which are less than the minimum size specified in subsection (q) of this Code section; and other construction projects needed to house the instructional programs authorized by provisions of this article;

(4) To adopt uniform rules, regulations, policies, standards, and criteria respecting all location, construction, equipping, operating, maintenance, and use of educational facilities as may be reasonably necessary to assure effective, efficient, and economical operation of the schools and all phases of the public education program provided for under the provisions of this article. Such matters shall include, but not be limited to, the method, manner, type, and minimum specifications for construction and installation of fixtures and equipment in educational facilities; space requirements per student; number and size of classrooms; allowable construction costs based on current annual construction cost data maintained by the Department of Education; and other requirements necessary to ensure adequate, efficient, and economical educational facilities. The state board shall adopt policies or standards which shall allow renovation costs up to the amount of new construction of a replacement facility, provided that the renovated facility provides comparable instructional and supportive space and has an extended life comparable to that of a new facility. Except for satisfying the most recent life safety codes, facilities which are undergoing renovation, modernization, or additions shall otherwise meet requirements applicable to them prior to

renovation, modernization, or additions, provided that such additions do not increase the student capacity of the facility substantially above the capacity for which it was designed;

(5) To develop a state-wide needs assessment for purposes of planning and developing policies, anticipating state-wide needs for educational facilities, and providing assistance to local school systems in developing educational facilities plans. The state-wide needs assessment shall be developed from, among other sources, vital statistics published by the Department of Public Health, census data published by the Bureau of the Census, local school system educational facilities and real property inventories, educational facilities surveys, full-time equivalent student projection research, and educational facilities construction plans; shall reflect circumstances where rapid population growth is caused by factors not reflected in full-time equivalent student projection research; and shall give priority to elementary school construction. In addition, the state board shall develop a consistent, systematic research approach to full-time equivalent student projections which will be used in the development of needs within each local unit. Projections shall not be confined to full-time equivalent resident students but shall be based on full-time equivalent student counts which include full-time equivalent nonresident students, whether or not such full-time equivalent nonresident students attend school pursuant to a contract between local school systems. The full-time equivalent projection shall be calculated in accordance with subsection (m) of this Code section. The survey team will use such projections in determining the improvements needed for the five-year planning period. The state board shall also develop schedules for allowable square footage and cost per square foot and review these schedules annually. The cost estimate for each recommended improvement included in the plan shall be based on these schedules. Any increase in cost or square footage for a project beyond that allowed by state board schedules for such projects shall be the responsibility of the local school system and shall not count toward present or future required local participation. The schedules for allowable square footage and cost per square foot shall be specified in regulations by the State Board of Education;

(6) To adopt policies, standards, and guidelines to ensure that the provisions of subsections (e), (f), (g), (h), (i), and (k.1) of this Code section relating to uses of state capital outlay funds, state and local share of costs, entitlements, allocation of capital outlay funds, advance funding for certain construction projects, and consolidation of schools across system lines are carried out;

(7) To review and approve proposed sites and all architectural and engineering drawings and specifications on construction projects for



educational facilities to ensure compliance with state standards and requirements, and inspect and approve completed construction projects financed in whole or in part with state funds. The state board may designate selected local units of administration which have staff qualified for such purposes to act on behalf of the Department of Education in such inspections;

(8) To coordinate construction project reviews with the state fire marshal's office and the Department of Public Health;

(9) To provide procedures whereby local school systems may revise their educational facilities plans or the priority order of construction projects requested to reflect unforeseen changes in locally identifiable needs, which revisions shall be approved by the State Board of Education, providing that such revisions meet state and local building codes, fire marshal certification, architectural requirements, and minimum size requirements under subsection (q) of this Code section; and

(10) To adopt uniform rules, regulations, policies, standards, and criteria respecting all location, construction, equipping, operating, maintenance, and use of education facilities which are used as schools and that are historic landmarks and which are registered as historic landmarks with the National Register of Historic Places or the Georgia Register of Historic Places or are certified by the state historic preservation officer as eligible for such registration and the expenditure of capital outlay funds otherwise available to a school system for such purposes.

(d) In order to qualify for and receive state capital outlay funds in accordance with provisions of subsections (g) and (h) of this Code section, each local school system must meet the following conditions and requirements:

(1) Prepare and annually update the real property inventory in accordance with provisions of subsection (c) of this Code section;

(2) Complete a local educational facilities plan in accordance with provisions of subsection (c) of this Code section. Each proposed construction project shall be identified according to the purposes for capital outlay funds as provided in subsection (e) of this Code section. Each local school system shall specify the order of importance of all proposed construction projects, giving priority to elementary school construction projects. When two or more local school systems agree on the need for a consolidation project pursuant to subsection (e) of this Code section, the estimated construction cost shall be prorated to the participating local school systems and included with their identification of needs in accordance with the proportion of the number of students to be served from each local school system;

(3) Prepare and annually update the local educational facilities needs in accordance with provisions of subsection (c) of this Code section;

(4) Complete a comprehensive educational facilities survey at least once every five years in accordance with provisions of subsection (c) of this Code section in order to formulate plans for educational facilities to house adequately the instructional program authorized by this article. Prior to initiating the survey, the local school system must file a written request with the State Board of Education that a survey be done in its behalf and recommending the individuals who will conduct it. The cost of the survey shall be paid from local funds;

(5) Submit requests for capital outlay funds to the Department of Education;

(6) Submit descriptions of proposed educational facility sites and all architectural and engineering drawings and specifications for educational facilities to the Department of Education for review and approval in accordance with provisions of subsection (c) of this Code section;

(7) Revise the local educational facilities plan and priority order of requested construction projects in accordance with provisions of subsection (c) of this Code section;

(8) Provide required local participation; and

(9) The Bryan County and Laurens County school systems shall be considered sparsity systems under Code Section 20-2-292 due to barriers which divide each of the systems for the purpose of capital outlay funding. The State Board of Education shall not apply base size criteria or require other criteria under Code Section 20-2-292 to Bryan County and Laurens County when qualifying requested construction projects under this Code section.

(e) State capital outlay funds for educational facilities appropriated in accordance with provisions of this Code section shall be used for the following purposes:

(1) To provide construction projects needed because of increased student enrollment or to replace educational facilities which have been abandoned or destroyed by fire or natural disaster and which shall consist of new buildings and facilities on new sites or new additions to existing buildings and facilities, or relocation of existing educational facilities or portions thereof to different sites;

(2) To provide construction projects to renovate, modernize, or replace educational facilities in order to correct deficiencies which produce educationally obsolete, unsafe, inaccessible, energy inefficient, or unsanitary physical environments;

(3) To provide construction projects for new additions to existing educational facilities or relocation of existing educational facilities or portions thereof to different sites in order to house changes in the instructional program authorized and funded under provisions of this article or new educational facilities on new sites or new additions to existing ones as a result of internal population shifts or changes in attendance zones within the local school system;

(4) To provide construction projects to consolidate educational facilities which have fewer pupils than required for the minimum school population specified in subsection (q) of this Code section or which are too expensive to renovate or modernize due to obsolescence or location and which shall consist of new educational facilities on new sites, new additions to existing sites, or relocation of existing educational facilities or portions thereof to different sites;

(5) To provide construction projects to consolidate the total student populations in elementary, middle, or high schools across local school system lines. In such projects, there shall be no requirement to include a vocational wing as defined within the high school structure but neither shall such vocational wing be excluded for funding purposes;

(6) To reimburse local school systems for current principal payments on local indebtedness for state approved construction projects for educational facilities. No local school system may request funds for the purposes of this paragraph unless and until all construction projects identified in its construction plan for the purposes of paragraphs (1) through (5) of this subsection have been completed;

(7) To provide construction projects to renovate or modernize facilities which are historic landmarks and are registered as historic landmarks with the National Register of Historic Places or the Georgia Register of Historic Places or are certified by the state historic preservation officer as eligible for such registration in order to correct deficiencies which produce educationally obsolete, unsafe, inaccessible, energy inefficient, or unsanitary physical environments; provided, however, that local school boards shall be required to use the facility which is or is eligible to be a historic landmark as a public school. Notwithstanding any other provisions of this Code section and without regard to location or obsolescence, the state board shall allocate funds to renovate and modernize historic landmark facilities which meet the requirements of this paragraph in an amount which is the lesser of the cost of new construction to replace the historic landmark or the actual cost of such renovation and modernization; provided, however, that the renovated facility has an extended life comparable to that of a new facility; and provided, further, that the local school system shall provide the remaining necessary capital



outlay funds to renovate the facility in accordance with all other requirements of this Code section. No lottery proceeds shall be appropriated from the Lottery for Education Account to fund any project or purpose authorized by this paragraph; and

(8) To provide construction projects that serve cooperative efforts between local school systems and postsecondary institutions.

(f) The state and each local school system shall provide capital outlay funds for educational facilities in accordance with this subsection as follows:

(1) The required local participation shall be no more than 20 percent nor less than 8 percent of the eligible project cost as determined by the local ability ratio. The local ability ratio is determined by multiplying the local wealth factor by 20 percent; and

(2) The state shall participate in no more than 25 percent of the cost of construction projects related to damage to educational facilities caused by fire or natural disaster.

(g)(1) In order to determine a reasonable total funding level for the purposes stated in subsection (e) of this Code section and to establish a fair and equitable distribution of funds to local school systems, the State Board of Education shall annually determine a level of authorization. Starting with fiscal year 2014 applications for funds and for each fiscal year thereafter, the new authorization level may equal zero but shall not exceed \$300 million, adjusted annually to reflect the changes in the current annual construction cost data maintained by the Department of Education pursuant to paragraph (4) of subsection (c) of this Code section. For purposes of deliberations with the Governor and the General Assembly regarding the amount of state funds to be appropriated, calculations shall be made for at least three levels below the \$300 million maximum authorization, adjusted as specified in this paragraph.

(2) In setting the annual authorization level under this subsection, the state board shall consider any previously authorized but unfunded amounts together with the total estimate of funds needed for school facilities in the state. Such total state facilities needs pursuant to this subsection shall be equal to the total facility improvement needs included in the most recent five-year educational facilities plan which has been reviewed by a survey team and approved by the state board. Such needs shall annually be adjusted downward for projects financed by either state or local funds and shall annually be adjusted upward or downward to reflect changes in the full-time equivalent student counts but shall not be otherwise adjusted upward except upon approval of a new or revised five-year plan pursuant to subsections (c) and (d) of this Code section.

(3) Each local school system shall be entitled to a portion of the total authorization set by the state board annually under this subsection based on the ratio of that local school system's needs as determined pursuant to paragraph (2) of this subsection to the total of all local school systems' needs. In addition to the annual entitlement, the local school system is eligible to receive any entitlement accrued from previous years for which state funds have not yet been received. Any change in the method of determining entitlements in subsequent years shall in no way affect the amount of previously accrued entitlements.

(4) In order to determine the amount of state funds to be requested for a given fiscal year under this subsection, total new and accrued entitlements must be compared to the state portion of the current cost estimates of the projects approved in the educational facilities plan in priority order. Such comparison shall be made for each of the incremental entitlement levels required in paragraph (1) of this subsection. In the event that projects requested for funding exceed the total state entitlements and required local participation, local school systems may elect to contribute additional local funding.

(5) The final level of entitlements actually authorized by the state board for a fiscal year shall be that level which is consistent with the Appropriations Act for that year.

(6) The entitlements earned by a local school system as of June 30, 2012, pursuant to former subsection (j) of this Code section as it existed on such date shall be combined with any entitlements of such local school system earned pursuant to this subsection.

(h) A local school system may receive state capital outlay funds for one construction project under the advance funding category to meet educational facilities needs due to the following:

(1) Extraordinary growth of student population in excess of the capacity of existing facilities;

(2) Destruction of or damage to educational facilities by fire or natural disaster, limited by the provisions of paragraph (2) of subsection (f) of this Code section;

(3) Replacement of educational facilities which have been certified as hazards to health or safety;

(4) Projects, in priority order, which would otherwise require more than five years of the combined annual entitlement and required local participation amounts, estimated in accordance with the total entitlement intended for authorization by the State Board of Education; and

(5) Projects for consolidation of schools across local school system lines which have costs that exceed the combined annual entitlements of the participating local school systems. Such projects shall meet, with the exception of paragraph (2) of this subsection, the following conditions to qualify for advance funding:

(A) The local school systems have specifically requested funding under this subsection prior to submission of the annual budget request for the state board to the General Assembly;

(B) Annual entitlements accrued under subsection (g) of this Code section have offset any advance funding previously granted, except that no more than five years of combined entitlements of the participating local school systems shall be required to offset advance funding for consolidation projects pursuant to paragraph (5) of subsection (e) of this Code section;

(C) The projects to be funded are not in addition to projects funded for local school systems under the provisions of subsection (g) of this Code section in a given year; and

(D) The required local participation and all other procedural requirements of this Code section are met.

(i) Local school systems may receive capital outlay funds for construction projects to consolidate or reorganize schools under an advance funding category; provided, however, that each construction project meets the following conditions:

(1) A school size and organizational study has been completed by the Department of Education;

(2) The local school system has adopted a comprehensive plan to reorganize so that each school within the system funded under this subsection shall meet or exceed the minimum sizes specified in subsection (q) of this Code section or contain all the students within the local school system for the respective school level; provided, however, that nothing contained in this subsection shall be construed so as to require an existing school to change its current grade configuration;

(3) The local facilities plan to implement this reorganization or consolidation of schools has been approved by a comprehensive survey team and the State Board of Education;

(4) The project proposed for advance funding must be accomplished in order for the reorganization or consolidation to be implemented; provided, however, that the proposed project may include renovation and modification of existing facilities, as well as additions to existing facilities and construction of new facilities if the reorga-



nization or consolidation cannot be implemented until these activities have been completed;

(5) The combined project total would otherwise require more than five years of the combined annual entitlement and required local participation, with said combined annual entitlement and required local participation amount estimated in accordance with the total entitlement intended for authorization by the state board;

(6) A schedule for funding the activities required to effect the reorganization or consolidation has been developed as a part of the organizational study, incorporated into the local facilities plan, and approved by the local board of education and the state board, and the funding for those activities required to effect the reorganization or consolidation will be scheduled over a one to five-year period;

(7) The project to be funded is not in addition to projects funded for a given local school system under the provisions of subsection (g) of this Code section for the fiscal year in which it is to be funded; and

(8) The required local participation and all other procedural requirements of this Code section are met.

(j) Reserved.

(k) The State Board of Education shall request separate appropriations for each of the following categories:

(1) Regular entitlements pursuant to subsection (g) of this Code section;

(2) Regular advance funding projects pursuant to paragraphs (1) through (4) of subsection (h) of this Code section;

(3) Construction projects resulting from the consolidation of schools across local school system lines pursuant to paragraph (5) of subsection (h) of this Code section;

(4) Construction projects resulting from merger of local school systems pursuant to subsection (a) of Code Section 20-2-291; and

(5) Advance funding projects for consolidation or reorganization of schools pursuant to subsection (i) of this Code section.

(k.1) Prior to a local board of education's decision becoming effective to close any existing school where such closing results in the transporting of students from the school to be closed to any new or existing school or schools even though no additional capital funding is required as a result of the assignment thereto of those students from any school to be so closed, the local board of education shall conduct the following:

(1) The board of education must schedule and hold two public hearings and provide an opportunity for full discussion of the local board of education's proposal to close such school or schools;

(2) The public hearings shall be advertised in a local newspaper of general circulation which shall be the same newspaper in which other legal announcements of the board of education are advertised and shall include, but not be limited to:

(A) Identification of each school to be closed and location of each new or existing school to which the students in the school or schools to be closed will be reassigned;

(B) Proposed size of each new school in terms of number of students and grade configuration;

(C) Proposed expansion of existing schools designed to accommodate students being reassigned from the school or schools to be closed;

(D) Total cost, including breakdown for state and local shares, for school construction projects required to house students being reassigned from the school or schools to be closed. Local costs shall include identifying proposed sources of funds, whether from bond referendum proceeds or other sources; and

(E) Plans for use or disposal of closed school property; and

(3) The board of education shall request formal, written comments or suggestions regarding the system's organizational pattern or school sizes and shall allow appropriate discussion during the public hearings.

(1) In the event the General Assembly is unable to appropriate the funds needed for a fiscal year to finance the total request of the State Board of Education under this Code section, the following priorities shall apply to the funds appropriated:

(1) Facility projects requested pursuant to subsection (g) of this Code section;

(2) Reserved;

(3) Facility projects requested pursuant to paragraphs (1) through (4) of subsection (h) of this Code section, subject to the following subpriorities:

(A) Facility projects needed to address extraordinary growth;

(B) Facility projects resulting from destruction or damage caused by fire or natural disaster;

(C) Facility projects needed to address hazards to health or safety; and

(D) Facility projects needed for unhoused students;

(4) Facility projects needed to effectuate local school system mergers pursuant to subsection (a) of Code Section 20-2-291;

(5) Facility projects requested pursuant to paragraph (4) of subsection (h) of this Code section, subject to the following subpriorities:

(A) Students housed in substandard or obsolete facilities;

(B) Facility projects designed to consolidate schools smaller than the minimum sizes specified in subsection (q) of this Code section; and

(C) Facility projects designed to meet state board requirements or for modernization;

(6) Facility projects needed to develop schools which will serve students across local school system lines pursuant to subsection (b) of Code Section 20-2-291; and

(7) Facility projects requested pursuant to subsection (i) of this Code section, subject to the same order of subpriorities specified in paragraphs (3) and (5) of this subsection.

(m) The State Board of Education shall implement a computerized student projection program for each school system in Georgia as a component of the state-wide comprehensive educational information system. The program shall be used in this subsection to forecast facility needs in each system by projecting full-time equivalent student counts for each grade level and shall be written in the educational facilities survey. The projection program methodology at least must correlate live-birth data to full-time equivalent student counts and project full-time equivalent student counts for each of the grades, including kindergarten, for each of the next five years using cohort survival.

(n) The State Board of Education shall request funds for capital outlay purposes as defined in subsections (a) through (i) of this Code section for each school system and project, giving priority to elementary school construction projects where practicable. For each project, the state board shall present to the Appropriations Committees of the House of Representatives and the Senate, the House Education Committee, and the Senate Education and Youth Committee by object of expenditure all costs contributing to the construction project. This itemization shall include, but not be limited to, architectural fees, new construction, modification, and renovation costs for the project. Itemization for additions, modifications, and renovations shall include type of classrooms by purpose, estimated square footages, and costs for hallways, restrooms, administrative offices, lunchrooms, and media centers. Costs for new facilities shall be budgeted by the current construction cost times the total square footage required.



(o) Reserved.

(p) Reserved.

(q) Construction projects which are identified by the local board pursuant to subsections (c) and (d) of this Code section and which contain a projected full-time equivalent student count of more than 200 students in an elementary school, 400 students in a middle school, and 500 students in a high school, as defined in subsection (c) of Code Section 20-2-291, or which contain all the students within the local school system for such respective school level shall be eligible to receive full capital outlay funding under the conditions specified in subsections (g), (h), and (i) of this Code section; provided, however, that nothing contained in this subsection shall be construed so as to require an existing school to change its current grade configuration.

(r) Reserved.

(s)(1) An appropriation for public school outlay for any one fiscal year that is in addition to the annual fiscal year appropriation for school capital outlay will be deemed a “special appropriation for school capital outlay” for purposes of this subsection when:

(A) The appropriation is to the Georgia State Financing and Investment Commission; and

(B) The Office of Planning and Budget confirms that a separate and substantial appropriation for public school capital outlay has been made during the same fiscal year to the board and Department of Education under another subsection of this Code section.

(2) The State Board of Education shall promulgate rules, policies, standards, and guidelines for the disbursement and application of any special appropriation for school capital outlay and these rules, policies, standards, and guidelines shall be utilized by the commission in making disbursements and overseeing applications of said special appropriation. The state board may provide for disbursement for any capital outlay purpose permitted by this Code section, unless purposes are stated more narrowly by the special appropriation, and may provide for amendments to facilities plans for the limited purpose of this paragraph. The board may set priorities among the permitted purposes and may require each school system to apply its portion first to such priorities.

(3) Each local school system shall be entitled to its portion of a special appropriation for school capital outlay based on the ratio of that system’s needs to the total state-wide need. The state board will provide for the determination of need as provided in this subsection and as otherwise provided in this Code section. No need will be

authorized which is not a permitted capital outlay purpose under this Code section.

(4) In providing for disbursement, the state board will determine whether:

(A) To require local participation in capital expenditures funded by the special appropriation for school capital outlay. No local participation will be required which exceeds that otherwise required by this Code section; and

(B) To allow a special appropriation for school capital outlay to be applied to reimbursement of current principal payments on local indebtedness.

In making its determination, the board will consider the efficient and economical use of the special appropriation for school capital outlay and local revenues.

(5) In providing for disbursement and application of a special appropriation for school capital outlay, the state board and the Georgia State Financing and Investment Commission will not be subject to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(t) In the event of destruction or damage to an educational facility caused by fire or natural disaster, if a local school system has insufficient funds to meet its required local participation, the school system may submit a request to the Department of Education for State Board of Education approval to redirect bond proceeds from a project which has not been started or in which a school system has not yet requested the full reimbursement. Such request to redirect shall be submitted by the board to the Georgia State Financing and Investment Commission and the Office of Planning and Budget for approval. If such request is approved, the local school system shall apply for an equivalent amount of funds in the following year to replace the funds advanced to it pursuant to this subsection. (Code 1981, § 20-2-260, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1991, p. 1531, § 5.1; Ga. L. 1992, p. 6, § 20; Ga. L. 1992, p. 1335, § 4; Ga. L. 1992, p. 3164, §§ 2-5; Ga. L. 1992, p. 3211, § 1; Ga. L. 1994, p. 1325, § 1; Ga. L. 1995, p. 10, § 20; Ga. L. 1996, p. 6, § 20; Ga. L. 1996, p. 1603, §§ 2-4; Ga. L. 1997, p. 1516, § 1; Ga. L. 1998, p. 1080, § 2; Ga. L. 2000, p. 618, §§ 43, 94; Ga. L. 2001, p. 148, § 13; Ga. L. 2005, p. 60, § 20/HB 95; Ga. L. 2006, p. 743, § 4/SB 515; Ga. L. 2009, p. 303, § 8/HB 117; Ga. L. 2009, p. 453, § 1-20/HB 228; Ga. L. 2010, p. 162, §§ 1, 2/HB 905; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2012, p. 202, §§ 1-17/HB 760; Ga. L. 2012, p. 775, § 20/HB 942.)

**The 2010 amendment**, effective May 20, 2010, added the ending undesignated paragraph in subsection (h) and added paragraph (j)(7).

**The 2011 amendment**, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the second sentence of paragraph (c)(5) and in paragraph (c)(8).

**The 2012 amendments.** — The first 2012 amendment, effective July 1, 2012, rewrote this Code section. See editor’s note for applicability. The second 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised language in paragraph (j)(5). See the Code Commission note regarding the effect of these amendments.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1987, “full-time equivalent” was substituted for “FTE” in paragraph (b)(8), paragraph (c)(5), subparagraph (g)(2)(A), and subsection (m).

Ga. L. 2012, p. 775, § 54(e)/HB 942, not codified by the General Assembly, provides: “In the event of an irreconcilable conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2012 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict.” Accordingly, the amendment to paragraph (j)(5) of this Code section by Ga. L. 2012, p. 775, § 20(3)/HB 942, was not given effect.

**Editor’s notes.** — Ga. L. 1992, p. 3164, § 6, not codified by the General Assembly,

provides: “Nothing contained in this Act shall affect any payment or allocation to any board of education of a local system as a result of bond proceeds authorized and sold under the provisions of House Bill 1262, Supplemental Appropriations Bill, passed on February 10, 1992, and payment shall be made to said boards of education as provided for in said House Bill 1262.”

Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

Ga. L. 2009, p. 303, § 20/HB 117, not codified by the General Assembly, provides that: “This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act.”

Ga. L. 2010, p. 162, § 4/HB 905, not codified by the General Assembly, repeals Ga. L. 2001, p. 148, § 21 and Ga. L. 2008, p. 288, § 1, effective May 20, 2010.

Ga. L. 2012, p. 202, § 19/HB 760, not codified by the General Assembly, provides that this Act shall apply beginning with Fiscal Year 2014 applications for funds and for each fiscal year thereafter.

**Law reviews.** — For review of 1998 legislation relating to education, see 15 Ga. St. U. L. Rev. 101 (1998). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

## JUDICIAL DECISIONS

**Retroactive application.** — When the county board of education submitted the board’s funding request to the state in 1990, well before the enactment of subsection (k.1) of O.C.G.A. § 20-2-260, in 1992 the subsection (k.1) could be applied retroactively. *Powell v. Studstill*, 264 Ga. 109, 441 S.E.2d 52 (1994).

**Meeting requirement of O.C.G.A. § 20-2-260 must have been legislatively intended to apply** to those local boards which applied for state funding

before the effective date of subsection (k.1) of O.C.G.A. § 20-2-260 and which thereafter found themselves embroiled in litigation seeking to prevent planned consolidation; therefore, subsection (r) of that section was intended to have retrospective effect. *Powell v. Studstill*, 264 Ga. 109, 441 S.E.2d 52 (1994).

**Cited in** *United States v. Georgia*, 19 F.3d 1388 (11th Cir. 1994); *United States v. Georgia*, 171 F.3d 1333 (11th Cir. 1999).



## OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 23-1702 and former Code Section 20-2-250, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

**State board may impose competitive bidding requirements on local boards.** — This section would permit the State Board of Education to impose competitive bidding requirements on local school boards when state capital outlay funds are involved. 1977 Op. Att'y Gen. No. 77-32 (decided under former Code 1933, § 23-1702).

**Favoring certain groups conflicts with acceptance of low bid.** — Atlanta Board of Education bidding process, to the extent it requires that bidders establish a minority and female business participation plan, conflicts with the Georgia Board of Education rule that capital outlay contracts be awarded to the responsible bidder submitting the low bid. 1993 Op. Att'y Gen. No. 93-23.

**Local systems which desire to consolidate across system lines** must include such projects as part of their five-year construction plans and receive entitlements based upon those needs. 1983 Op. Att'y Gen. No. U83-43 (decided under former Code Section 20-2-250).

**Accrued entitlements applied to consolidated system projects.** — When local systems which desire to consolidate grades seven through 12 across system lines include such projects as part of their five-year construction plans and are funded, the accrued entitlements of the local systems are applied to the consolidation projects. 1983 Op. Att'y Gen. No. U83-43 (decided under former Code Section 20-2-250).

**Eligibility for facilities funding.** — Local board of education which voluntarily consolidates two high schools, thereby obtaining a number of full-time students of 485 or more but less than 970 students, and which complies with the capital outlay requirements of O.C.G.A. § 20-2-260 is eligible for facilities funding under O.C.G.A. § 20-2-291(b) if the new high school will serve more than 485 full-time equivalent students. 1986 Op. Att'y Gen. No. U86-37.

**Reduction in local participation under capital outlay program.** — State Board of Education can determine, pursuant to the board's rulemaking power, the reduction in local participation under the capital outlay program of APEG by adding the annual debt service payments for each year in which the entitlement is granted. 1982 Op. Att'y Gen. No. 82-77 (decided under former Code Section 20-2-250).

## 20-2-261. Common minimum facility requirements.

(a) The State Board of Education shall establish common minimum facility requirements which each public school facility must meet in order to be certified for use in any component of the educational or recreational program of that school. Such minimum requirements shall include those provisions of law or state board policy on matters that relate to fire and physical safety; sanitation and health, including temperature and ventilation; minimum space, size, and configuration for the various components of the instructional program; and construction stability, quality, and suitability for intended uses.

(b) The State Board of Education shall adopt policies and procedures to ensure that each school facility meets minimum standards as determined by state board policy.

(c) A proposed plan of action which includes a list and description of each deficiency and time limits within which such deficiencies are to be corrected must be submitted to the State Board of Education for review and approval. Further, the state board shall have the authority, in accordance with Code Section 20-2-243, to withhold all or part of the state funds in support of this part from any local unit of administration refusing or failing to implement the plan of action for deficiency remediation approved by the state board.

(d) A local board of education shall be exempt from county and municipal assessments and fees for county and municipal building permits and inspections and exempt from county and municipal impact fees. (Code 1981, § 20-2-261, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1993, p. 541, § 1; Ga. L. 1995, p. 915, § 1.)

**20-2-262. Legislative findings; low-wealth capital outlay grants to local school systems; criteria for eligibility.**

(a) The General Assembly finds that many local school systems in Georgia have relatively weak local tax bases and are unable to raise revenues sufficient to meet their facility needs. The General Assembly further finds that even with current levels of state capital outlay support, these systems must wait for years before they can accumulate funds to initiate construction projects that are needed immediately. For some systems, the availability of the local option sales tax does not resolve their problem, because their commercial tax base is as meager as their property wealth. It is the intent of the General Assembly to provide for state capital outlay grants specifically targeted to low-wealth school systems, on a short-term basis, in order to help such systems initiate what they have been unable to accomplish with existing revenue sources.

(b) As used in this Code section, the term:

(1) “Equivalent millage” means, for a local school system that is eligible to receive local option sales tax proceeds for maintenance and operation purposes, the combination of property tax revenues and sales tax revenues representing the amount that would be generated by a designated rate of mills.

(2) “Full-time equivalent student count” shall have the same meaning as provided in Code Section 20-2-260.

(c) The State Board of Education shall provide eligible local school systems with low-wealth capital outlay grants as provided for in this Code section, subject to appropriation by the General Assembly. Such grants shall provide sufficient funds to cover 92 percent of the state eligible cost of the local school system’s first priority project in the

five-year facilities plan, as contained in the system's most recently approved local facilities plan. In addition, for each mill over 12 mills levied by the local school system or over an equivalent millage of 12 mills, the state board will authorize an additional 1 percent of the state eligible cost of the local school system's first priority project in the five-year facilities plan, as contained in the system's most recently approved local facilities plan, up to a maximum of 8 additional mills.

(d) Local school systems which meet the following criteria shall be eligible for a low-wealth capital outlay grant:

(1)(A)(i) The amount of sales tax revenues per unit in the full-time equivalent student count of the local school system is ranked in the bottom 25 percent of local school systems for sales tax revenues per unit in the full-time equivalent student count; and

(ii) The value of property per unit in the full-time equivalent student count of the local school system is ranked in the bottom 25 percent of local school systems for value of property per unit in the full-time equivalent student count; or

(B) For local school systems in which the amount of special purpose local option sales tax revenues is ranked in the bottom 25 percent of local school systems receiving such sales tax revenues, such systems may submit a request to the department for consideration; provided, however, that the local school system shall be required to commit the equivalent of five years of such revenues for the project. The department shall consider factors such as the high cost of a project, the local school system's ability to manage the project on its own, and the needs of the local school system, in determining whether to approve a project pursuant to this subparagraph;

(2) The local school system's millage rate for maintenance and operation is at least 12 mills or an equivalent millage thereof;

(3) A special purpose local option sales tax is in effect in the local school district or the local school system has in place a millage rate for debt service on bonds, or both; and

(4) The local school system uses prototypical specifications as defined by the State Board of Education for the project.

(e) No local school system qualifying for a low-wealth project pursuant to this Code section shall have a required local contribution, as determined pursuant to subsection (c) of this Code section, that is greater than the revenue generated by the applicable special purpose local option sales tax revenue over its five-year period. In the event that the sum of such required local contribution and the low-wealth capital outlay grant determined pursuant to subsection (c) of this Code section



is less than the state eligible cost of the project, the state shall provide funds to make up the difference; provided, however, that the local school system shall repay the state such difference through future earned regular entitlements. (Code 1981, § 20-2-262, enacted by Ga. L. 1999, p. 400, § 1; Ga. L. 2001, p. 148, § 14; Ga. L. 2010, p. 162, § 3/HB 905; Ga. L. 2012, p. 202, § 18/HB 760.)

**The 2010 amendment**, effective May 20, 2010, added subsection (e).

**The 2012 amendment**, effective July 1, 2012, rewrote this Code section. See editor's note for applicability.

**Editor's notes.** — Ga. L. 2012, p. 202,

§ 19/HB 760, not codified by the General Assembly, provides that this Act shall apply beginning with Fiscal Year 2014 applications for funds and for each fiscal year thereafter.

## PART 11

### REGIONAL EDUCATIONAL SERVICE AGENCIES

**Administrative rules and regulations.** — Grant programs, Official Compilation of the Rules and Regulations of the

State of Georgia, Georgia Department of Education, Chapter 160-1-4.

## 20-2-270. Establishment of state-wide network.

(a) The State Board of Education shall establish a state-wide network of regional educational service agencies for the purposes of: providing shared services designed to improve the effectiveness of educational programs and services to local school systems; providing instructional programs directly to selected public school students in the state; and providing Georgia Learning Resources System services. The regional educational service agencies established by the state board may legally be referred to as “RESA” or “RESA’s.”

(b) The State Board of Education shall establish the service area of each regional educational service agency as a geographically defined area of the state. All local school systems, Technical College System of Georgia facilities and institutions, and University System of Georgia facilities and institutions that are located in the designated geographical area shall be members of that regional educational service agency.

(c) Every state supported postsecondary institution shall be an active member of a regional educational service agency.

(d) Each regional educational service agency and its employees shall be subject to or exempt from taxation in the same manner as are school systems and school system employees.

(e) All employees and volunteers of a regional educational service agency shall be immune from liability to the same extent as are employees and volunteers of a school system.

(f) Regional educational service agencies are not state agencies but shall be considered local units of administration for purposes of this chapter. (Code 1981, § 20-2-270, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1990, p. 1972, § 4; Ga. L. 1995, p. 1302, § 17; Ga. L. 1995, p. 1340, § 2; Ga. L. 1996, p. 1062, § 1; Ga. L. 2000, p. 618, § 44; Ga. L. 2008, p. 335, § 2/SB 435; Ga. L. 2012, p. 358, § 20/HB 706.)

**The 2012 amendment**, effective July 1, 2012, added subsection (f).

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly,

provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

### JUDICIAL DECISIONS

**Regional agencies not state agencies.** — Regional educational service agencies are not state agencies and, therefore, are not public employers under

O.C.G.A. § 45-1-4, the whistleblower statute. *North Ga. Regional Educ. Serv. Agency v. Weaver*, 272 Ga. 289, 527 S.E.2d 864 (2000).

#### **20-2-270.1. Services to member local school systems by regional educational service agency; Georgia Learning Resources System; congruous service areas; Psycho-educational Network continued; sale of goods to private schools.**

(a) Each regional educational service agency shall provide the following shared services to member local school systems:

(1) Identifying or conducting research related to educational improvements and in planning for the implementation of such improvements;

(2) Developing and implementing staff development programs with an emphasis on improving student achievement and school accountability;

(3) Developing and implementing curricula and instruction of the highest quality possible, including implementing the uniformly sequenced core curriculum adopted by the state board;

(4) Developing and implementing academic assessment and evaluation programs;

(5) Identifying and utilizing electronic technology, including computers, in an effort to improve the quality of classroom instruction as well as classroom, school, and school system management;

(6) Developing programs, resource materials, and staff development services relating to instruction on alcohol and drug abuse; and

(7) Assistance in the development and implementation of a state-wide mentoring program.

The shared services may also include assistance designed to address documented local needs pursuant to subsection (d) of Code Section 20-2-272.

(b) The state board shall make the service areas for the Georgia Learning Resources System congruous with the service areas for the RESA's. The RESA's are designated as the fiscal agents for the agency of the Georgia Learning Resources System or a local board of education as identified by the State Board of Education through an annual contract to serve as fiscal agent for the Georgia Learning Resources System. All member local school systems shall be provided the services of the Georgia Learning Resources System.

(c) The Psychoeducational Network for severely emotionally disturbed students shall be continued in effect. The service areas of units of the Psychoeducational Network for severely emotionally disturbed students in place on January 1, 1995, shall be continued in effect. The fiscal agent for each service area shall be as in effect on January 1, 1995, unless changed as provided in this subsection. Upon the request of a majority of the local school superintendents of the local school systems within a service area, representatives of each of the local school systems in the respective service area shall vote in the manner and at the time prescribed by the state board to determine if one of the local school systems or the regional educational service agency serving the respective service area shall serve as the fiscal agent for the respective unit of the Psychoeducational Network for the ensuing fiscal year. In the event this vote results in a change in the fiscal agent for the respective unit, the new fiscal agent shall continue in this capacity for a minimum of three fiscal years. In the event a regional educational service agency is designated as the fiscal agent for a service area, all member local school systems shall be provided the services of the Psychoeducational Network.

(d) A regional educational service agency shall be authorized to sell or provide at reasonable costs goods to private schools located in this state. (Code 1981, § 20-2-270.1, enacted by Ga. L. 2000, p. 618, § 45; Ga. L. 2002, p. 1149, § 1.)

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, may be cited as the 'A Plus Education Reform Act of 2000.' provides: "This Act shall be known and



**20-2-271. Development of regional improvement plan; introduction of core services; instructional care teams; establishment of alternative methods of teacher certification.**

(a) Each regional educational service agency shall annually develop and submit to the Department of Education for approval, with a copy to the Education Coordinating Council, a regional plan for improvement of educational efficiency and cost effectiveness of its member institutions. Each plan must include the purposes and description of the services the regional educational service agency will provide to schools identified as low-performing based on the indicators adopted under Code Section 20-14-33 and to other schools.

(b) By July 1, 2002, each regional educational service agency shall introduce and provide core services for member local school systems and schools and provide core services for purchase by local school systems and schools which are not members of that regional educational service agency. These core services shall include the following:

(1) Training and assistance in teaching each subject area assessed under Code Section 20-2-281;

(2) Assistance specifically designed for any school that is rated academically failing under Code Section 20-14-33;

(3) Training and assistance to teachers, administrators, members of local boards of education, and members of local school councils on school-based decision making and control; and

(4) Assistance in complying with applicable state laws and rules of the State Board of Education and the Education Coordinating Council.

Nothing in this Code section shall be construed to limit the freedom of a school system or school to purchase or refuse to purchase any core service from any regional educational service agency in this state.

(c) As part of the assistance provided by a regional educational service agency under this Code section, each regional educational service agency shall provide for the establishment of instructional care teams. Upon determining that a school under its management and control is consistently underperforming or is otherwise educationally deficient, a local board of education may request through a regional educational service agency the appointment of an instructional care team for that school. The instructional care team shall consist of such number of persons with such experience as a principal, teacher, or other education personnel so as to best address the needs of the school. Such instructional care team shall conduct an investigation into such aspects

of instruction at the school as requested by the local board, prepare a written evaluation of such aspects of the school, and make nonbinding recommendations to the local board regarding improvements at the school. Such investigations, evaluations, and recommendations shall focus on, but not be limited to, instruction in mathematics, science, reading and other English courses, and social studies. Instructional care teams may also provide long-term and short-term follow-up assistance, such as but not limited to instruction, instructional assistance, and professional and staff development. Each regional educational service agency shall develop a registry or listing of potential instructional care team members, together with their areas of expertise, who may be available to member or nonmember local school systems for service on instructional care teams. Each regional educational service agency shall promulgate rules and regulations for the purchase of the services of an instructional care team, provided that nothing in this Code section shall prevent regional educational service agencies from entering into cooperative arrangements for the mutual exchange of such services. Subject to appropriation by the General Assembly, regional educational service agencies may be provided grants for the purpose of facilitating the development and implementation of instructional care teams.

(d) Each regional educational service agency may provide any additional service and any assistance to its member systems, as determined by the board of control. Each regional educational service agency may offer any service and form of assistance provided for in this Code section for purchase by any local school system or school in this state.

(e) Pursuant to rules and regulations developed by the Professional Standards Commission, each regional educational service agency shall develop programs for nontraditional alternative routes to state teacher certification as an alternative to traditional educator preparation, with special consideration provided to critical field shortages in its regional teaching work force.

(f) Each regional educational service agency may acquire, lease, purchase, lease purchase, or dispose of real or personal property and may incur debts for those purposes, subject to the approval of such agency's board of control. Such property shall be held in the name of the regional educational service agency. (Code 1981, § 20-2-271, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1995, p. 1340, § 2; Ga. L. 1996, p. 1062, § 1; Ga. L. 2000, p. 618, § 46; Ga. L. 2009, p. 8, § 20/SB 46.)

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

## OPINIONS OF THE ATTORNEY GENERAL

**Georgia Military College is not a “local school system”** and is ineligible to be a member of a regional educational service agency. 1997 Op. Att’y Gen. No. U97-30.

**20-2-272. Agency board of control; membership; powers and duties; planning boards.**

(a) Each regional educational service agency shall be governed by a board of control. On and after July 1, 2000, the school superintendent of each member school system, the president or highest administrator of each member postsecondary institution, and a local public or regional library director appointed by the director of the Office of Public Library Services of the Board of Regents of the University System of Georgia shall serve as the board of control.

(b) All laws and the policies and regulations of the State Board of Education applicable to local school systems and local boards of education shall be applicable, when appropriate, to the regional educational service agencies and their boards of control unless explicitly stated otherwise in this part. No board of control shall levy or collect any taxes. No board of control shall expend or contract to expend any funds beyond the amount of funds that the board of control is legally authorized to receive and will, in fact, receive, except as otherwise provided in this part. Each board of control shall submit an annual report and an annual budget to the state board, in the manner prescribed by the state board, for review and approval.

(c) The State Board of Education shall be responsible for assuring that the activities of each regional educational service agency and its board of control established under this part conform to both the Constitution and laws of Georgia, as well as the policies and regulations of the state board.

(d) Boards of control shall determine the assistance needed by local school systems in the area served by each regional educational service agency, establish priorities from those needs, and allocate resources accordingly. Boards of control shall annually review the effectiveness and efficiency of such agencies. Boards of control shall determine the procedures and activities by which each regional educational service agency achieves locally established objectives and shall establish job descriptions, personnel qualifications, and work schedules consistent with locally established priorities and objectives.

(e) In the event the State Board of Education adopts a policy to reorganize the service areas of regional educational service agencies pursuant to Code Section 20-2-270 effective July 1 of a fiscal year, members of boards of control during the preceding fiscal year shall



constitute planning boards for the respective service areas to be established the ensuing July 1. Each planning board shall have the authority to establish the location or locations of the office or offices of its regional educational service agency effective the ensuing July 1, to issue contracts with a director and other agency staff to be employed effective the ensuing fiscal year, to assess the needs of all potential member local school systems, to prepare operational plans and budgets for the ensuing fiscal year, to establish the manner by which the local share of the budget will be assessed to potential member local school systems, and to make any other such decisions that the state board deems necessary for an orderly transition of service areas for regional educational service agencies. Such decisions shall be adopted by these planning boards prior to December 15 of the fiscal year preceding the effective date for reorganization of the service areas. Any such planning board shall be authorized to amend, prior to April 15 of that fiscal year, any such decisions which are necessary as the result of the actions of the General Assembly during its regular session during that fiscal year. (Code 1981, § 20-2-272, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1995, p. 1340, § 2; Ga. L. 1996, p. 1062, § 1; Ga. L. 2000, p. 618, § 47.)

**Editor’s notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

OPINIONS OF THE ATTORNEY GENERAL

**Editor’s notes.** — In light of the similarity of the statutory provisions, an opinion under former Ga. L. 1974, pp. 1045 and 1066, which were subsequently repealed but were succeeded by provisions in this Code section, is included in the annotations for this Code section.

**Cooperative (now regional) educational service agencies** are not county or independent boards of education. Rather the agencies are service agencies designed to provide educational and support services and programs to a combined group of local school systems. 1981 Op. Att’y Gen. No. 81-52 (decided under former Ga. L. 1974, pp. 1045 and 1066).

20-2-273. Agency directors and staff.

- (a) Each board of control shall appoint and contract with a director who shall be the executive officer of the regional educational service agency. The director shall be responsible for the administration of programs and services approved by the board of control, including the Georgia Learning Resources System, except for those under contract with a local board of education serving as fiscal agents for the Georgia Learning Resources System.
- (b) The regional educational service agency staff shall consist of those individuals authorized by the board of control to provide the instructional and support services prescribed in this part. (Code 1981,

§ 20-2-273, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1995, p. 1340, § 2; Ga. L. 1996, p. 1062, § 1; Ga. L. 2000, p. 618, § 48.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1995, “agents” was substituted for “agent” in the last sentence of subsection (a).

§ 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

**Editor’s notes.** — Ga. L. 2000, p. 618,

## **20-2-274. Uniform state-wide needs program and documented local needs program grants.**

(a) The state board shall be authorized to provide each regional educational service agency with a uniform state-wide needs program grant and a documented local needs program grant, subject to appropriation by the General Assembly. The uniform state-wide needs program grant shall consist of two components: the same fixed amount for each regional educational service agency; and an amount which reflects the number of local school systems, the number of schools, the number of students, and the number of square miles contained collectively within its member local school systems. Each regional educational service agency shall be required to match the uniform state-wide needs program grant with an amount of funds equal to one-fourth of this grant. The uniform state-wide needs grant and its matching local funds shall be used to finance the basic administrative overhead of the regional educational service agencies and to provide the areas of assistance specified in Code Sections 20-2-270.1 and 20-2-271. The amount of funds granted to each regional educational service agency for the documented local needs program grant shall depend upon the proportion that the number of local school systems, number of schools, number of students, and number of square miles contained collectively within its member local school systems are of these respective factors state wide, as well as the adopted operational plan and the budget designed to address documented needs for assistance to member local school systems. Each regional educational service agency shall be required to match the documented local needs program grant with an amount of funds equal to two-thirds of that grant. The state board shall provide grants to regional educational service agencies for Georgia Learning Resources Systems or to a local school system contracted to be a fiscal agent for a Georgia Learning Resources System. Each board of control shall be authorized to adopt the manner by which each member local school system shall be assessed its share of the uniform state-wide needs program and the documented local needs program; provided, however, that member local school systems shall not be allowed to use funds received under the provisions of this article for this purpose. The state board shall grant the regional educational service agency the

funds needed to provide services to all local school systems in the service area of the Georgia Learning Resources System designated as the fiscal agent or to any local school system contracted to serve as the fiscal agent for a Georgia Learning Resource System as well as the grants authorized previously by this subsection. All other financing will be based on contracts to supply service programs to member local school systems. The funds for these programs, upon a contract approval basis, may be derived from local, state, federal, or private sources.

(b) A regional educational service agency may not receive directly from the State Board of Education any state funds originally intended for or directed to a local school system by this article; provided, however, that, upon the official request of a local school system, the state board may send directly to a regional educational service agency any funds allocated to a local school system. All grants from the state along with the contributions from member local school systems and funds from other sources shall be budgeted by the board of control other than those designated to local systems designated as fiscal agents for a Georgia Learning Resource System through contract with the State Board of Education. (Code 1981, § 20-2-274, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1988, p. 612, § 13; Ga. L. 1995, p. 1340, § 2; Ga. L. 1996, p. 1062, § 1; Ga. L. 2000, p. 618, § 49.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1995, “agents” was substituted for “agent” in the last sentence of subsection (b).

**Editor’s notes.** — Ga. L. 2000, p. 618,

§ 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

## PART 12

### EFFECTIVENESS OF EDUCATIONAL PROGRAMS

#### 20-2-280. Long-term strategic plans.

Reserved. Repealed by Ga. L. 2000, p. 618, § 50, effective July 1, 2000.

**Editor’s notes.** — This Code section was based on Code 1981, § 20-2-280, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1.

Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

#### 20-2-281. Assessment of effectiveness of educational programs.

(a) The State Board of Education shall adopt a student assessment program consisting of instruments, procedures, and policies necessary to implement the program and shall fund all costs of providing and scoring such instruments, subject to appropriation by the General



Assembly. Each local school system may elect to administer, with state funding, nationally norm-referenced instruments in reading, mathematics, science, or social studies in grade three, four, or five and in grade six, seven, or eight, subject to available appropriations, with assistance to such school systems by the State Board of Education with regard to administration guidance, scoring, and reporting of such assessments. The State Board of Education shall review, revise, and upgrade the quality core curriculum. Following the adoption of this revised curriculum, the State Board of Education shall contract for development of criterion-referenced competency tests to measure the quality core curriculum. Such tests in English and language arts, mathematics, and reading shall be administered annually to students in grades one through eight, and such tests in science and social studies shall be administered annually to students in grades three through eight. This action shall be completed according to a schedule established by the State Board of Education. A curriculum based assessment shall be administered in grade 11 for graduation purposes. Writing assessments shall be administered to students in grades three, five, eight, and 11. The writing assessments shall provide students and their parents with performance outcome measures resulting from the administration of such tests.

(b) The nationally normed assessments provided for in subsection (a) of this Code section shall provide students and their parents with grade equivalencies and percentile ranks which result from the administration of such tests. Criterion-referenced tests and the high school graduation test provided for in subsection (a) of this Code section shall provide for results that reflect student achievement at the individual student, classroom, school, system, and state levels. The State Board of Education shall participate in the National Assessment of Educational Progress (NAEP) and may participate in any other tests that will allow benchmarking this state's performance against national or international performance. The results of such testing shall be provided to the Governor, the General Assembly, and the State Board of Education and shall be reported to the citizens of Georgia. Further, the state board shall adopt a school readiness assessment for students entering first grade and shall administer such assessment pursuant to paragraph (2) of subsection (b) of Code Section 20-2-151. One of the components in the awarding of salary supplements as part of a pay for performance or related plan under this article may be assessments of student achievement.

(b.1) The State Board of Education shall notify local school systems and individual schools of the results of the assessment instruments administered under this Code section at the earliest possible date determined by the state board, but not later than the beginning of the subsequent school year.

(c) The State Board of Education shall have the authority to condition the awarding of a high school diploma to a student upon achievement of satisfactory scores on instruments or tests adopted and administered by the state board pursuant to subsection (a) of this Code section. The state board is authorized and directed to adopt regulations providing that any disabled child, as defined by the provisions of this article, shall be afforded opportunities to take any test adopted by the state board as a condition for the awarding of a high school diploma. Said regulations shall further provide for appropriate accommodations in the administration of such test. Said regulations shall further provide for the awarding of a special education diploma to any disabled student who is lawfully assigned to a special education program and who does not achieve a passing score on said test or who has not completed all of the requirements for a high school diploma but who has nevertheless completed his or her Individualized Education Program.

(d)(1) The State Board of Education shall develop or adopt alternate assessments to be administered to each student receiving special education services pursuant to Code Section 20-2-152 who does not receive instruction in the essential knowledge and skills identified in the quality core curriculum developed pursuant to Code Section 20-2-140 and for whom the assessment instruments adopted under subsection (a) of this Code section, even with allowable modifications, would not provide an appropriate measure of student achievement, as determined by the student's Individualized Education Program team. A student's Individualized Education Program may serve as an alternate assessment for that student.

(2) A student's Individualized Education Program team shall determine appropriate participation in assessment and identify necessary accommodations in accordance with the federal Individuals with Disabilities Education Act.

(e) The State Board of Education is authorized to adopt rules, regulations, policies, and procedures regarding accommodations and the participation of limited-English-proficient students, as defined in Code Section 20-2-156, in the assessments described in this Code section.

(f) The State Board of Education shall adopt end-of-course assessments for students in grades nine through 12 for all core subjects to be determined by the state board. For those students with an Individualized Education Program, the student's Individualized Education Program team shall determine appropriate participation in assessments and identify necessary accommodations in accordance with the federal Individuals with Disabilities Education Act.

(g) Under rules adopted by the State Board of Education, the Department of Education shall, subject to appropriations by the Gen-

eral Assembly, release some or all of the questions and answers to each criterion-referenced competency test administered under subsection (a) of this Code section and each end-of-course assessment administered under subsection (e) of this Code section after the last time the instrument is administered for a school year.

(h) The State Board of Education, through the Department of Education, shall administer the end-of-course assessments for core subject areas as defined by state board policy. The state board shall promulgate a schedule for the development and administration of all end-of-course tests. By the 2015-2016 school year, the State Board of Education shall make all end-of-course assessments available online and shall establish rules and regulations to maximize the number of students and school systems utilizing such online assessments.

(i) The Department of Education shall develop study guides for the criterion-referenced tests and end-of-course assessments administered pursuant to subsections (a) and (f) of this Code section. Each school system shall distribute the study guides to students who do not perform satisfactorily on one or more parts of an assessment instrument administered under this Code section and to the parents or guardians of such students.

(j)(1) The high school graduation test provided for in subsection (a) of this Code section shall continue in effect until all high school core subject end-of-course assessments have been developed and implemented, at which time the state board shall discontinue the test according to a schedule to be determined by the state board.

(2) The State Board of Education shall adopt rules and regulations requiring the results of core subject end-of-course assessments to be included as a factor in a student's final grade in the core subject course for which the end-of-course assessment is given.

(k)(1) In addition to the assessment instruments adopted by the State Board of Education and administered by the Department of Education, a local school system may adopt and administer criterion-referenced or norm-referenced assessment instruments, or both, at any grade level. Such locally adopted assessment instruments may not replace the state's adopted assessment instruments for purposes of state accountability programs, except as otherwise provided in paragraph (2) of this subsection. A local school system shall be responsible for all costs and expenses incurred for locally adopted assessment instruments. Students with Individualized Education Programs must be included in the locally adopted assessments or provided an alternate assessment in accordance with the federal Individuals with Disabilities Education Act.

(2) The State Board of Education shall have the authority to grant waivers until Fiscal Year 2003 to local boards of education exempting



said boards from the administration of the state criterion-referenced competency tests at any or all of the subject areas and grade levels for which the local board of education implements a locally developed criterion-referenced competency test or tests based on the Quality Core Curriculum which increases the expectations for student achievement beyond that of the applicable state criterion-referenced competency test or tests and meets all other requirements of this Code section, including reliability and validity requirements, with the exception of subsection (g) of this Code section. Local boards of education with such waivers shall submit to the State Board of Education school and local school system score reports of the locally developed criterion-referenced competency tests.

(l) In adopting academic skills assessment instruments under this Code section, the State Board of Education or local school system shall ensure the security of the instruments in their preparation, administration, and scoring. Notwithstanding any other provision of law, meetings or portions of meetings held by the state board or a local board of education at which individual assessment instruments or assessment instrument items are discussed or adopted shall not be open to the public, and the assessment instruments or assessment instrument items shall be confidential.

(m) The results of individual student performance on academic skills assessment instruments administered under this Code section shall be confidential and may be released only in accordance with the federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Section 1232g.

(n) Overall student performance data shall be disaggregated by ethnicity, sex, socioeconomic status, disability, language proficiency, grade level, subject area, school, system, and other categories determined by policies established by the Office of Student Achievement.

(o) Student performance data shall be made available to the public, with appropriate interpretations, by the State Board of Education, the Office of Student Achievement, and local school system. The information made available to the public shall not contain the names of individual students or teachers.

(p) Teachers in grades one through 12 shall be offered the opportunity to participate annually in a staff development program on the use of tests within the instructional program designed to improve students' academic achievement. This program shall instruct teachers on curriculum alignment related to tests, disaggregated student test data to identify student academic weaknesses by subtests, and other appropriate applications as determined by the State Board of Education.

(q) The State Board of Education shall consider the passage by a student of an industry certification examination or a state licensure

examination which is approved by the State Board of Education when considering whether to grant such student a variance for one or more portions of the high school graduation test required by the State Board of Education pursuant to subsection (a) of this Code section in order to obtain a Georgia high school diploma; provided, however, that the state board shall not grant a variance to a student unless the student has attempted and failed to pass the relevant portion of the high school graduation test at least four times. (Code 1981, § 20-2-281, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1991, p. 1543, § 1; Ga. L. 1995, p. 311, § 1; Ga. L. 1995, p. 1302, § 14; Ga. L. 1996, p. 1600, § 2; Ga. L. 2000, p. 618, § 51; Ga. L. 2003, p. 185, § 3; Ga. L. 2004, p. 107, § 7; Ga. L. 2008, p. 807, § 1/HB 637; Ga. L. 2010, p. 186, § 2/HB 400; Ga. L. 2012, p. 358, § 21/HB 706; Ga. L. 2012, p. 775, § 20/HB 942; Ga. L. 2012, p. 893, § 3/SB 289.)

**The 2010 amendment,** effective May 20, 2010, added subsection (q).

**The 2012 amendments.** — The first 2012 amendment, effective July 1, 2012, deleted “pursuant to Code Section 20-2-213 or other Code sections” following “related plan” in the last sentence of subsection (b). The second 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (a). The third 2012 amendment, effective July 1, 2012, in subsection (h), deleted “by December 1, 2000” from the end of the second sentence, and added the last sentence.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1996, “disabled” was substituted for “handicapped” in the second and fourth sentences of subsection (c).

**Editor’s notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

**Law reviews.** — For note on the 2003 amendment to this Code section, see 20 Ga. St. U. L. Rev. 147 (2003).

## OPINIONS OF THE ATTORNEY GENERAL

**Exemption of students with disabilities.** — State Board of Education has authority to provide an exemption for students with disabilities from the gradua-

tion assessments, and local school systems may modify the test to accommodate such students. 1997 Op. Att’y Gen. No. 97-11.

## 20-2-282. Georgia Academic Placement and Promotion Policy.

(a) It is the policy of the State of Georgia that the placement or promotion of a student into a grade, class, or program should be based on an assessment of the academic achievement of the student and a determination of the education setting in which the student is most likely to receive the instruction and other services needed in order to succeed and progress to the next higher level of academic achievement.

(b) This policy as provided for in this Code section and Code Sections 20-2-283 through 20-2-285 shall be known as the “Georgia Academic Placement and Promotion Policy.” (Code 1981, § 20-2-282, enacted by Ga. L. 2001, p. 148, § 15.)

**Editor's notes.** — Former Code Section 20-2-282, relating to comprehensive evaluation of public schools, local systems, and regional agencies, was repealed by Ga. L. 2000, p. 618, §§ 52, 53, effective July 1, 2000. The former Code section was

based on Code 1981, § 20-2-282, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1988, p. 1848, §§ 1, 2; Ga. L. 1991, p. 1630, §§ 4, 5; Ga. L. 1994, p. 668, § 4; Ga. L. 1995, p. 1340, § 3; Ga. L. 1996, p. 6, § 20.

**20-2-283. Criteria; specific requirements for students in grades three, five, and eight; implementation.**

(a) No later than January 1, 2002, the State Board of Education shall adopt criteria for the development of a placement and promotion policy by each local board of education consistent with the Georgia Academic Placement and Promotion Policy.

(b) Such criteria as adopted by the State Board of Education shall require the following for students in grades three, five, and eight:

(1) No student shall be promoted, except as provided in this Code section, to:

(A) The fourth grade program to which the student would otherwise be assigned if the student does not achieve grade level as defined by the Office of Student Achievement in accordance with Code Section 20-14-31 on the third grade criterion-referenced reading assessment developed in accordance with subsection (a) of Code Section 20-2-281 and meet the promotional standards and criteria established by the State Board of Education and by the local school board for the school that the student attends;

(B) The sixth grade program to which the student would otherwise be assigned if the student does not achieve grade level as defined by the Office of Student Achievement in accordance with Code Section 20-14-31 on the fifth grade criterion-referenced mathematics assessment and fifth grade criterion-referenced reading assessment developed in accordance with subsection (a) of Code Section 20-2-281 and meet the promotional standards and criteria established by the State Board of Education and by the local school board for the school that the student attends; or

(C) The ninth grade program to which the student would otherwise be assigned if the student does not achieve grade level as defined by the Office of Student Achievement in accordance with Code Section 20-14-31 on the eighth grade criterion-referenced mathematics assessment and eighth grade criterion-referenced reading assessment developed in accordance with subsection (a) of Code Section 20-2-281 and meet the promotional standards and criteria established by the State Board of Education and by the local school board for the school that the student attends;



(2) When a student does not perform at grade level on any criterion-referenced assessment specified in paragraph (1) of this subsection then the following shall occur:

(A) The parent or guardian of the student shall be notified in writing by first-class mail by the school principal or such official's designee regarding the student's performance below grade level on the assessment instrument, the retest to be given the student, the accelerated, differentiated, or additional instruction program to which the student is assigned, and the possibility that the student might be retained at the same grade level for the next school year;

(B) The student shall be retested with a criterion-referenced assessment or an alternative assessment instrument that is appropriate for the student's grade level as provided for by the State Board of Education and the local board of education; and

(C) The student shall be given an opportunity for accelerated, differentiated, or additional instruction in the applicable subject; and

(3) When a student does not perform at grade level on any criterion-referenced assessment specified in paragraph (1) of this subsection and also does not perform at grade level on a second additional opportunity as provided for in paragraph (2) of this subsection then the following shall occur:

(A) The school principal or the principal's designee shall retain the student for the next school year except as otherwise provided in this subsection;

(B) The school principal or the principal's designee shall notify in writing by first-class mail the parent or guardian of the student and the teacher regarding the decision to retain the student. The notice shall describe the option of the parent, guardian, or teacher to appeal the decision to retain the student and shall further describe the composition and functions of the placement committee as provided for in this subsection, including the requirement that a decision to promote the student must be a unanimous decision of the committee;

(C) If the parent, guardian, or teacher appeals the decision to retain the student, then the school principal or designee shall establish a placement committee composed of the principal or the principal's designee, the student's parent or guardian, and the teacher of the subject of the assessment instrument on which the student failed to perform at grade level and shall notify in writing by first-class mail the parent or guardian of the time and place for convening the placement committee;

(D) The placement committee shall:

(i) Review the overall academic achievement of the student in light of the performance on the criterion-referenced assessment and the standards and criteria as adopted by the local board of education and make a determination to promote or retain. A decision to promote must be a unanimous decision and must determine that if promoted and given accelerated, differentiated, or additional instruction during the next year, the student is likely to perform at grade level as defined by the Office of Student Achievement in accordance with Code Section 20-14-31 by the conclusion of the school year; and

(ii) Prescribe for the student, whether the student is retained or promoted, such accelerated, differentiated, or additional instruction as needed to perform at grade level by the conclusion of the subsequent school year, prescribe such additional assessments as may be appropriate in addition to assessments administered to other students at the grade level during the year, and provide for a plan of continuous assessment during the subsequent school year in order to monitor the progress of the student;

(E) For students receiving special education or related services, the Individualized Education Plan Committee shall serve as the placement committee; and

(F) The decision of the placement committee may be appealed only as provided for by the local board of education.

(c) This Code section does not preclude the retention by the school principal or the principal's designee of a student who performs satisfactorily on the criterion-referenced assessments specified in paragraph (1) of subsection (b) of this Code section as provided for by the local board of education.

(d) This Code section does not create a property interest in promotion.

(e) The State Board of Education shall establish policies and procedures for implementation of this Code section. (Code 1981, § 20-2-283, enacted by Ga. L. 2001, p. 148, § 15; Ga. L. 2004, p. 107, § 22.)

**Editor's notes.** — Former Code Section 20-2-283, relating to corrective plans for nonstandard units and schools, was repealed by Ga. L. 2000, p. 618, §§ 52, 53, effective July 1, 2000. The former Code section was based on Code 1981,

§ 20-2-283, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1.

**Law reviews.** — For article, "Education Law," see 53 Mercer L. Rev. 281 (2001).

**20-2-284. Criteria for local boards of education; model placement and promotion policy.**

(a) No later than July 1, 2003, each local board of education shall develop and adopt a placement and promotion policy in accordance with the criteria established by the State Board of Education as provided in Code Section 20-2-283 and consistent with the Georgia Academic Placement and Promotion Policy.

(b) Except for those criterion-referenced assessments specified in Code Section 20-2-283, the placement and promotion policy as developed and adopted by each local board of education shall state how the criterion-referenced competency tests administered under Code Section 20-2-281 for grades one through eight will be weighted or otherwise utilized by the school principal or the principal's designee in determining the overall academic achievement of a student and an appropriate plan of accelerated, differentiated, or additional instruction, placement, promotion, or retention of a student.

(c) To assist each local board of education, the State Board of Education shall develop a model placement and promotion policy which may be utilized by a local board of education. (Code 1981, § 20-2-284, enacted by Ga. L. 2001, p. 148, § 15.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2001, "Code Section" was inserted preceding "20-2-281" in subsection (b).

**Editor's notes.** — Former Code Section 20-2-284, relating to the Council for

School Performance, was repealed by Ga. L. 2000, p. 618, §§ 52, 53, effective July 1, 2000. The former Code section was based on Code 1981, § 20-2-284, enacted by Ga. L. 1993, p. 1438, § 1.

**20-2-285. Timetable for implementation of policy.**

The State Board of Education shall provide for a timetable of implementation of this Code section and the Georgia Academic Placement and Promotion Policy which shall include:

- (1) The third grade beginning with the 2003-2004 school year;
- (2) The fifth grade beginning with the 2004-2005 school year; and
- (3) The eighth grade beginning with the 2005-2006 school year. (Code 1981, § 20-2-285, enacted by Ga. L. 2001, p. 148, § 15.)

**20-2-285.1. Provisions applicable to third-grade criterion-referenced reading assessment students.**

Repealed by Ga. L. 2012, p. 358, § 22/HB 706, effective July 1, 2012.



**Editor's notes.** — This Code section Ga. L. 2005, p. 60, § 20/HB 95; Ga. L. was based on Ga. L. 2004, p. 107, § 7A; 2009, p. 303, § 6/HB 117.

**20-2-286. Georgia Closing the Achievement Gap Commission; creation; membership; vacancies; purpose; authority; compensation; termination.**

Repealed by Ga. L. 2008, p. 324, § 20/SB 455, effective May 12, 2008.

**Editor's notes.** — This Code section 2002, p. 415, § 20; Ga. L. 2004, p. 107, was based on Code 1981, § 20-2-286, en- § 22. acted by Ga. L. 2001, p. 148, § 15; Ga. L.

PART 13

ORGANIZATION OF SCHOOLS AND SYSTEMS

**20-2-290. Organization of schools; middle school programs; schedule.**

(a)(1) The board of education of any local school system is authorized to organize or reorganize the schools and fix the grade levels to be taught at each school in its jurisdiction. Schools which house grades six, seven, or eight, or any combination thereof, shall qualify for the middle school program for students; provided, however, that such schools also meet all other provisions of this Code section and criteria and standards prescribed by the State Board of Education. Further, two or more adjacent local school systems shall qualify for the middle school program if through their contractual arrangement they jointly meet the requirements of this Code section and the criteria and standards prescribed by the state board.

(2) The board of education of any local school system shall be authorized to employ school administrative managers in lieu of or in addition to assistant principals. Such school administrative managers shall not be required to be certificated by the Professional Standards Commission but shall have such qualifications as determined by the local board with a minimum requirement of a bachelor's degree. The duties of school administrative managers shall be to oversee and manage the financial and business affairs of the school. The principal shall retain authority over the curriculum and instructional areas. The school administrative manager shall report directly to the principal. In the event that a local board considers hiring or utilizing school administrative managers pursuant to this subsection, it shall receive and give all due consideration to recommendations by the school council as to whether or not to utilize such position and as to selection of the manager. Existing employees of the local board shall be eligible to serve as school administrative managers if they

meet other qualifications and requirements established by the local board for such position. For purposes of earning funds for such positions, school administrative managers shall be treated in all respects the same as assistant principals.

(b) Local boards of education shall schedule each middle school so as to provide the following:

(1) A minimum of five hours of instruction in English and language arts, reading, mathematics, science, social studies, and such other academic subjects as the State Board of Education shall prescribe;

(2) Beyond the minimum of five hours of academic instruction, the local board shall have the authority to schedule for the remainder of the day such academic or exploratory classes as the State Board of Education shall prescribe; provided, however, that a student shall be allowed to take additional academic classes instead of exploratory classes if the parent or guardian of such a student requests such assignment, subject to availability; and

(3) An interdisciplinary team of academic teachers with common planning time of a minimum of 55 minutes.

(c) Local school systems shall comply with subsection (b) of this Code section in order to qualify for the middle school program.

(d) If a local school system has a combination of qualified and nonqualified schools, it shall qualify for the middle school program only for those students counted in the full-time equivalent count for the middle school program in qualified middle schools. (Code 1981, § 20-2-290, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1990, p. 892, § 1; Ga. L. 1991, p. 94, § 20; Ga. L. 2000, p. 618, § 54; Ga. L. 2001, p. 148, § 16; Ga. L. 2004, p. 107, § 7B; Ga. L. 2005, p. 60, § 20/HB 95; Ga. L. 2007, p. 259, § 2/SB 72; Ga. L. 2011, p. 647, § 7/HB 192.)

**The 2011 amendment**, effective May 13, 2011, rewrote paragraph (a)(1); substituted “Local” for “Except as otherwise provided in subsection (c) of this Code section, local” at the beginning of subsection (b); deleted the last sentence of paragraph (b)(1), which read: “For students not performing on grade level, as defined by the Office of Student Achievement, the minimum of five hours shall include such remedial academic instruction in English and language arts, reading, mathematics, science, or social studies as required to bring such students to grade level performance with the priority for such remediation being placed on reading and

mathematics or as otherwise determined by the student’s team of academic teachers; provided that, in making such a determination the team shall consider the student’s performance on the criterion-referenced assessments authorized in Code Section 20-2-181”; deleted former subsection (c), which read: “Local schools may apply to the state board for an exception to the schedule set out in subsection (b) of this Code section in order to schedule a minimum of 4.5 hours of academic instruction. If the local school has achieved an acceptable rating for the preceding year, the state board shall grant the application for an exception.”; redesign-

nated former subsection (d) as present subsection (c); deleted “or (c)” following “subsection (b)” in subsection (c); and re-designated subsection (e) as subsection (d).

**Editor’s notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

### **20-2-291. Financing construction of facilities for voluntary consolidation.**

(a) In the event a local school system is voluntarily merged with one or more adjoining local school systems under the provisions of Code Section 20-2-60 or Code Sections 20-2-370 through 20-2-372, all local school systems which are party to such voluntary merger shall not be required to finance any portion of the costs for new construction or renovation of existing facilities qualified under Code Section 20-2-260 that are needed to effectuate the merger of the school systems, subject to appropriation by the General Assembly.

(b) In the event two or more local school systems voluntarily consolidate two or more elementary, middle, or high schools into a single school which meets or exceeds the minimum sizes specified in subsection (q) of Code Section 20-2-260 or 100 percent of the student population for the respective school level from all local school systems which are party to the consolidation will attend such school, all local school systems involved in such consolidation shall not be required to finance any portion of the costs of new construction or renovation of existing facilities qualified under Code Section 20-2-260 that are needed to effectuate such school consolidation.

(c) As used in this subsection, the term:

(1) Reserved.

(2) Reserved.

(3) Reserved.

(4) “Elementary school” is defined as a school which contains any grade below grade four and does not contain any grade above grade eight.

(5) “High school” is defined as a school which contains any grade above grade eight.

(6) “Middle school” is defined as a school which contains no grade below grade four and no grade above grade eight.

(7) Reserved.

(8) “School level” is defined as a grade range which is consistent with paragraph (4), (5), or (6) of this subsection.



In the event a local school system consolidates an elementary, a middle, or a high school which is smaller than the minimum size specified in subsection (q) of Code Section 20-2-260 for that respective school with one or more other schools of the same school level within the same local school system, resulting in the consolidated school or schools being at least as large as the minimum size specified in subsection (q) of Code Section 20-2-260 or containing all the students within the local school system for the respective school level: the local school system shall be required to finance one-half the costs that the local school system would otherwise be required to finance under the provisions of Code Section 20-2-260 for any new construction or any renovation of existing facilities needed to effectuate such consolidation of schools.

(d) All benefits to local school systems as provided under this Code section shall be conditioned upon the following:

(1) No student shall be expected or required to travel a greater time than the maximum travel time prescribed by the State Board of Education to attend a school unless the state board explicitly authorizes an exemption based upon the greater good for all students which will result from such local school system merger or school consolidation; and

(2) In the event of such local school system merger or school consolidation, all instructional facilities will be utilized for public educational purposes to the extent feasible and practical.

(e) All benefits to local school systems as provided under subsections (a) and (b) of this Code section shall be conditioned upon the following:

(1) The local boards of education which are potential parties to a merger of local school systems or a consolidation of schools have approved resolutions requesting the State Board of Education to conduct a feasibility study;

(2) The state board has conducted a feasibility study;

(3) The local boards of education which are to be parties to a merger of local school systems or a consolidation of a school or schools have approved the recommendations of the feasibility study;

(4) The voters of the affected local school systems, if appropriate, have approved the merger of the local school systems; and

(5) The state board has approved the recommendations of the feasibility study. (Code 1981, § 20-2-291, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1994, p. 1325, § 2.)

## OPINIONS OF THE ATTORNEY GENERAL

**Eligibility for facilities funding.** — Local board of education which voluntarily consolidates two high schools, thereby obtaining a number of full-time students of 485 or more but less than 970 students, and which complies with the

capital outlay requirements of O.C.G.A. § 20-2-260 is eligible for facilities funding under subsection (b) of O.C.G.A. § 20-2-291 if the new high school will serve more than 485 full-time equivalent students. 1986 Op. Att'y Gen. No. U86-37.

**20-2-292. Sparsity grants.**

(a) The State Board of Education shall provide sparsity grants to qualified local school systems beyond those funds to which they otherwise are entitled by the provisions of this article and other statutes, subject to appropriation by the General Assembly. To qualify for a sparsity grant, a local school system shall meet the following conditions:

(1) The local school system is unable to offer its students or a portion of its students educational programs and services comparable to those which are typically being offered to students in this state under provisions of this article with the funds provided for this purpose; and

(2) The inability to offer students comparable programs and services is attributable, at least in part, to the fact that the local school system has full-time equivalent counts less than base sizes specified pursuant to Code Section 20-2-181 or the affected school or schools have full-time equivalent counts less than the base sizes referenced pursuant to Code Section 20-2-181; and

(3) The state board has found, based upon a study it has completed within the past five years, that merger of local school systems or the consolidation of schools pursuant to Code Section 20-2-291, whichever applies to the specific situation, is unfeasible because consolidation of schools would result in a proportion of students whose travel time to such schools would be in excess of the state board prescribed criteria concerning travel time to and from assigned schools; or

(4) The state board has concluded based upon a study pursuant to subsection (e) of Code Section 20-2-291, that merger of local school systems and the resulting consolidation of schools is feasible and the local school system has met the state board prescribed criteria concerning efforts to effectuate such a merger of the local school systems, but officials or voters of the other local school system or systems party to such merger efforts have rejected the proposed merger; or

(5) The adjoining local school system or systems have refused to participate in a study pursuant to subsection (e) of Code Section 20-2-291 to determine the feasibility of a merger; or

(6) The state board has concluded that the local school system would still be unable to offer comparable educational programs and services to its students or a portion of its students even if the local school systems were merged or if schools were consolidated, since the resulting schools would still be smaller than the base sizes specified pursuant to Code Section 20-2-181.

(b) The State Board of Education shall conduct a sparsity grant needs study for each local school system meeting the conditions set forth in subsection (a) of this Code section. The needs study shall include at least the following:

(1) The identification of all instructional, administrative, and support service resources essential to the provision of educational programs and services to all students in a manner comparable to those educational programs and services which are typically offered to students in this state under the provisions of this article with the funds provided for this purpose;

(2) The identification of resources which will actually be provided under the provisions of this article; and

(3) The assignment of cost to all such resources which are identified as needed under paragraph (1) of this subsection but not identified as being provided under paragraph (2) of this subsection.

The sparsity grant to an eligible local school system shall be equal to the total cost assigned to resources needed but not being provided pursuant to paragraph (3) of this subsection, adjusted annually to reflect changes in the salaries and operational costs similar to those changes made under the provisions of this article.

(c) Once a local school system receives a sparsity grant under the provisions of this Code section, it shall continue to be eligible for such grant; provided, however, that it meets the following conditions:

(1) It continues to meet the conditions of subsection (a) of this Code section;

(2) A feasibility study pursuant to subsection (e) of Code Section 20-2-291 concerning the merger of school systems has been done within the past five years by the State Board of Education if the local school system has a full-time equivalent count less than the base size specified pursuant to Code Section 20-2-181 or the potential party local school system or systems have refused to participate in such a feasibility study or have refused to adopt its recommendations; and

(3) A sparsity grant needs study pursuant to subsection (b) of this Code section has been done within the past five years.

(d) Beginning with the 2001-2002 school year, a school system may be eligible to receive a sparsity grant to supplement funding for



alternative education programs operated pursuant to Code Section 20-2-154.1. Funds shall be distributed based on rules and regulations adopted by the State Board of Education subject to appropriation by the General Assembly. (Code 1981, § 20-2-292, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1; Ga. L. 1988, p. 612, § 14; Ga. L. 1989, p. 1228, §§ 1, 2; Ga. L. 1993, p. 1667, § 3; Ga. L. 1994, p. 1325, § 3; Ga. L. 2000, p. 618, § 55; Ga. L. 2001, p. 148, § 17.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1987, “full-time equivalent” was substituted for “FTE” twice in paragraph (a)(2) and once in paragraph (c)(2).

**Editor’s notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

### RESEARCH REFERENCES

**ALR.** — Liability for injury to martial arts participant, 47 ALR4th 403.

### **20-2-293. Student attending school in system other than system of student’s residence.**

(a) The provisions of this article and other statutes to the contrary notwithstanding, the State Board of Education is authorized to provide a procedure whereby a student shall, for such compelling reasons and circumstances as may be specified by the state board, be permitted to attend and to be included as an enrolled student in the public schools of a local unit of administration other than the local unit of administration wherein the student resides for the purpose of allotting state funds under this article, notwithstanding absence of an agreement between the two local units and a refusal by the board of education of the local unit wherein the student resides to approve voluntarily such transfer of the student to the public schools of the other local unit; provided, however, that the board of education of the local unit is willing to receive and to permit such student to enroll in and to attend the public schools of such local unit. The state board shall adopt such rules, regulations, and policies as may be necessary for implementation of this Code section. Grant or refusal of permission for students to attend such schools, for the purpose of permitting state funds to follow such students, shall be entirely discretionary with the state board and shall, in the absence of a clear abuse of discretion by the state board, be final and conclusive. Local units of administration may contract with each other for the care, education, and transportation of students and for such other activities as they may be authorized by law to perform.

(b) Notwithstanding the provisions of subsection (a) of this Code section or any other general law, and except as provided by the General Assembly by local law, a student shall be allowed to attend and be

enrolled in the school in which a parent or guardian of such student is a full-time teacher, professional, or other employee, notwithstanding the fact that such school is not located in the local unit of administration in which such student resides. Each school system of this state shall provide procedures to implement the provisions of this subsection. (Code 1981, § 20-2-305, enacted by Ga. L. 1985, p. 1657, § 1; Code 1981, § 20-2-293, as redesignated by Ga. L. 1987, p. 1169, § 1; Ga. L. 1989, p. 925, § 1; Ga. L. 1992, p. 2103, § 1.)

**Editor's notes.** — Ga. L. 1987, p. 1169, § 1, effective July 1, 1987, amended, transferred, and redesignated as this Code section former Code Section 20-2-305.

See the Editor's notes under the Article 6 heading for information as to the repeal of the former Code section.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 255 et seq.

### **20-2-294. Permanent classrooms; student commuting distance; reassignment; cost of transportation.**

(a) It is the intent of the General Assembly that students receive academic instruction in permanent classrooms where possible and, further, that students be transported to schools that are within a reasonable distance from the student's place of residence. In order to allow for hardships imposed by inadequate classroom space and excessive distances, this Code section authorizes students to receive education services outside the school district in which they reside, subject to rules promulgated by the State Board of Education.

(b) The parent or guardian of a student enrolled in a public elementary or secondary school in this state may elect to request reassignment to a public school that is located within the school district in which the student resides other than the one to which the student has been assigned by the local board of education if the school to which the student has been assigned does not have available permanent classroom space in which the student can attend classes and a school within the district in which the student resides has permanent classroom space available. At any time during the school year in which a student is assigned to nonpermanent classroom facilities for instruction, the parent or guardian of a student may apply to the local board for reassignment.

(c) If the student's place of residence is located closer to a school other than the school assigned the student by the local board of education,

regardless of the school district in which the closer school is located, and the distance or travel time to the school to which the student has been assigned is, in the determination of the State Board of Education, excessive, and the school which the student is applying to attend is the closest available public school offering a regular program to the student's residence and has available permanent classroom space, the State Board of Education may authorize the student to attend the closer school. State Quality Basic Education Program funds, including the local five mill share, allotted to the sending school system shall be reallocated to the receiving school system in an amount correlated to the number of transferred students. A request for reassignment shall be submitted in writing to the district offices of both the district in which the student resides and the district in which the student is requesting to attend school no later than seven days following the assignment of the student to a school and notification of assignment to the student's parent or guardian. Upon assignment of nonresident students, the school system that is providing services may elect to make application to the state for funds that represent the difference between the dollar amount per full-time equivalent student represented by the state program funds received and the total dollar amount per full-time equivalent student expended by the system for a similarly enrolled student; provided, however, that local transportation costs shall not be included in the amount requested. The Department of Education shall request funds in the midterm adjustment amount sufficient to provide for these costs after the amounts submitted have been adjusted to account for students moving between the same two school systems so as to subtract the base cost, represented as the lesser of the two local school system costs per full-time equivalent student amounts, from the greater amount.

(d) The responsibility for and cost of transporting the student to a school to which the student has been assigned under this Code section shall be that of the student. Nothing in this Code section shall be construed to interfere with desegregation plans in effect or any subsequent implementation thereof. Nothing in this Code section shall be construed to alter contractual relationships between two or more school systems. (Code 1981, § 20-2-294, enacted by Ga. L. 2000, p. 618, § 56.)

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"



PART 14

OTHER EDUCATIONAL PROGRAMS

**Editor's notes.** — Ga. L. 1987, p. 1169, § 1, effective July 1, 1987, amended and in effect transferred and redesignated the provisions of this part as indicated in the table below:

|                     |                     | Former              | Present             |
|---------------------|---------------------|---------------------|---------------------|
|                     |                     | <u>Code Section</u> | <u>Code Section</u> |
|                     |                     | (g)                 | 20-2-306(a)         |
|                     |                     | (h)                 | 20-2-306(b)         |
|                     |                     | (i)                 | 20-2-307            |
| Former              | Present             | 20-2-301            | 20-2-301            |
| <u>Code Section</u> | <u>Code Section</u> | 20-2-302            | 20-2-310(a)         |
| 20-2-300(a)         | 20-2-300            | 20-2-303            | 20-2-310(b)         |
| (b)                 | 20-2-302            | 20-2-304            | 20-2-310(c)         |
| (c)                 | 20-2-303            | 20-2-305            | 20-2-293            |
| (d)                 | 20-2-304            | 20-2-306            | 20-2-320            |
| (e)                 | 20-2-311            | 20-2-307            | 20-2-322            |
|                     | [repealed]          | 20-2-308            | 20-2-321            |
| (f)                 | 20-2-305            |                     |                     |

20-2-300. Implementation and funding authorized.

The State Board of Education shall have authority to provide for implementation of other educational programs not ordinarily coming within the prescribed curricula of the public schools which may or may not require use by local units of administration of additional specially qualified personnel and special equipment necessitating allotment of additional funds. The state board is authorized to establish priorities, standards, and criteria for implementation and operation of such programs as it may find necessary or desirable to implement on a state-wide basis. Local units of administration may, prior to implementation of such programs by the state board, implement such programs locally in accordance with criteria and standards prescribed by the state board. The state board shall, prior to implementation of such programs, establish a uniform basis for allotment of additional funds necessary for operation of such programs, provided the General Assembly has appropriated funds for this purpose. (Code 1981, § 20-2-300, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1.)

**Cross references.** — Establishment of special schools, Ga. Const. 1983, Art. VIII, Sec. V, Para. VII. Powers and duties of the Board of Regents as to public libraries, § 20-5-1 et seq. Certification of librarians, T. 43, C. 24.

**Editor's notes.** — See the Editor's note at the beginning of this part for information as to the redesignation of the former provisions of this Code section.

Ga. L. 1987, p. 575, § 1, effective July 1,

1987, provided for the repeal of subsection (e) of this Code section as it existed prior to the amendment of this Code section by Ga. L. 1987, p. 1169, § 1 and for the enactment of a new Code Section 20-2-311 [repealed] with provisions similar to those in former subsection (e) of this Code section. That latter Act in effect would have redesignated subsection (e) of this Code section as Code Section 20-2-305. Both Acts were given effect as redesignating

former subsection (e) of this Code section as Code Section 20-2-311. Code Section 20-2-311 was repealed in 1988.

### 20-2-301. Coordinating Committee for Exceptional Individuals.

Reserved. Repealed by Ga. L. 2008, p. 1015, § 6/SB 344, effective May 14, 2008.

**Editor's notes.** — This Code section 1987, p. 1169, § 1; Ga. L. 1995, p. 1302, § 14. was based on Code 1981, § 20-2-301, enacted by Ga. L. 1985, p. 1657, § 1; Ga. L.

### 20-2-302. Funds for operation of schools for deaf and blind persons.

(a) The State Board of Education shall annually determine the amount of funds needed for operation of the state schools for the deaf and blind. Such funds appropriated by the General Assembly shall be made available for the operation of these schools under rules and regulations prescribed by the state board.

(b) Employees of the state schools for the deaf and blind governed by the State Board of Education shall serve in the unclassified service as defined by Code Section 45-20-2, provided that employees who serve in the classified service as defined by Code Section 45-20-2 may elect to remain in the classified service and be governed by the provisions thereof; provided, further, that such employees who choose to be promoted to unclassified positions or who request to transfer to different positions or locations shall become members of the unclassified service.

(c) The State Board of Education may delegate to the State School Superintendent the authority to employ and dismiss employees at the state schools for the deaf and blind. (Code 1981, § 20-2-300, enacted by Ga. L. 1985, p. 1657, § 1; Code 1981, § 20-2-302, as redesignated by Ga. L. 1987, p. 1169, § 1; Ga. L. 1995, p. 1069, § 2; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-23/HB 642.)

**The 2012 amendment**, effective July 1, 2012, substituted “service as defined by Code Section 45-20-2” for “service of the State Personnel Administration as defined by Code Section 45-20-6” in two places in subsection (b).

**Cross references.** — Deaf person defined, § 30-1-1. Individualized education program for blind students with evaluation of Braille skills, § 30-7-3. Blindness education, screening, and treatment program, § 31-1-23. Delivery of deaf-blind

services and techniques leading to maximum independence, § 34-15-20.

**Editor's notes.** — See the Editor's note at the beginning of this part for information as to the redesignation of the former provisions of this Code section.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Depart-

ment of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, pro-

vides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

### **20-2-303. Educational television.**

Reserved. Repealed by Ga. L. 2012, p. 358, § 23/HB 706, effective July 1, 2012.

**Editor's notes.** — This Code section Code 1981, § 20-2-303, as redesignated by was based on Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 1169, § 1.

### **20-2-304. Environmental education, recycling, and composting awareness.**

(a) The Department of Education shall develop curriculum materials and resource guides for an environmental education, recycling, and composting awareness program for kindergarten through grade 12. The purpose of such program shall be to instill in students an appreciation for the environment and their place within the environment.

(b) The department shall compile and disseminate to interested persons information on successful environmental programs in this state and elsewhere in the country. The department shall include environmental education and recycling and composting awareness programs as a part of the in-service training and staff development programs for schools, school systems, and regional educational service agencies. (Code 1981, § 20-2-304, enacted by Ga. L. 1992, p. 2331, § 1.)

**Editor's notes.** — Former Code Section 20-2-304 was based on Ga. L. 1985, p. 1657, § 1, and Ga. L. 1987, p. 1169, § 1. For present provisions concerning adult education, see Code Section 20-4-10 et seq.

See the Editor's note at the beginning of this part for information as to the redesignation of the former provisions of this Code section.

### **20-2-305. County and regional libraries.**

(a) The board of regents shall annually determine and request of the General Assembly the amount of funds needed for county and regional public libraries. This request shall include, but not be limited to, funds to provide library books and materials, salaries and travel for professional librarians, capital outlay for public library construction, and maintenance and operation. The amount for library books and materials shall be not less than 35¢ per person. Funds for the purpose of paying the salaries of librarians allotted shall be in accordance with regulations established by the state board and the state minimum salary schedule for certificated professional personnel. Public library



funds shall be apportioned to county and regional public libraries in proportion to the area and population to be served by such libraries in accordance with regulations and minimum public library requirements prescribed by the state board. All such funds shall be distributed directly to the regional or county library boards.

(b) The board of regents shall make adequate provisions for staff, supplies, services, and facilities to operate and maintain special media equipment to meet the library needs of the blind and disabled citizens of this state.

(c) The board of regents shall provide the staff, materials, equipment, and supplies to provide a book-lending and information service to all county and regional public libraries in the state and to coordinate interlibrary cooperation and interchange of materials and information among all types of libraries.

(d) The board of regents is authorized as the sole agency to receive federal funds allotted to this state for public libraries.

(e) The board of regents shall adopt policies and regulations to implement this Code section.

(f) As used in this Code section, the term “board of regents” means the Board of Regents of the University System of Georgia. (Code 1981, § 20-2-300, enacted by Ga. L. 1985, p. 1657, § 1; Code 1981, § 20-2-305, as redesignated by Ga. L. 1987, p. 1169, § 1; Ga. L. 1995, p. 1302, § 14; Ga. L. 1996, p. 167, § 4; Ga. L. 2000, p. 618, § 57.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1996, a cent symbol was substituted for “cents” in the third sentence of subsection (a).

**Editor’s notes.** — See the Editor’s note at the beginning of this part for information as to the redesignation of the former provisions of this Code section.

Ga. L. 1996, p. 167, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Education Reform Act of 1996.’”

Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

## **20-2-306. Honors program; residential high school program.**

(a) The State Board of Education is authorized to inaugurate an honors program for students in the public and private high schools of this state and for resident students who attend a home school program who have manifested exceptional abilities or unique potentials or who have made exceptional academic achievements. This program shall be conducted during summer months between normal school year terms at institutions of higher learning or other appropriate centers within this state with facilities adequate to provide challenging opportunities for advanced study and accomplishments by such students. The student honors program shall be implemented and operated in accordance with

criteria established by the state board, and operating costs shall be paid by the state board from funds made available for this purpose by the General Assembly. The state board is authorized to enter into cooperative agreements with the Board of Regents of the University System of Georgia for operating and sharing the costs of such programs.

(b) The State Board of Education is authorized to inaugurate and operate a residential high school program for highly gifted and talented youth of this state. This residential high school program shall consist only of students in the eleventh and twelfth grades. Enrollment shall be by student application and on a voluntary basis; provided, however, that the parent or legal guardian of each student must have signed an agreement authorizing enrollment in this program. This program shall be operated during the normal school year for a minimum of 180 days, or the equivalent thereof as determined in accordance with State Board of Education guidelines, in cooperation with one or more of the state universities or colleges from funds provided by the General Assembly. The state board is authorized to enter into cooperative agreements with the Board of Regents of the University System of Georgia concerning the operation and sharing of costs of this program. The state board shall prescribe policy, regulations, standards, and criteria as needed for the effective operation of this program. (Code 1981, § 20-2-300, enacted by Ga. L. 1985, p. 1657, § 1; Code 1981, § 20-2-306, as redesignated by Ga. L. 1987, p. 1169, § 1; Ga. L. 2009, p. 72, § 1/SB 210; Ga. L. 2009, p. 638, § 4/HB 193.)

**Editor's notes.** — See the Editor's note at the beginning of this part for information as to the redesignation of the former provisions of this Code section.

#### OPINIONS OF THE ATTORNEY GENERAL

**Governor's Honors Program.** — O.C.G.A. § 20-2-306 does not authorize the State Board of Education to include home-schooled students in the Governor's Honors Program. 1998 Op. Att'y Gen. No. 98-18.

#### **20-2-307. Youth camps; food-processing and young farmers programs.**

The State Board of Education shall have authority to provide for the operation of youth camps, food-processing programs, and young farmer programs. The state board shall annually determine the amount of funds needed to provide the programs described in this subsection and shall annually request from the General Assembly such appropriations as are needed. (Code 1981, § 20-2-300, enacted by Ga. L. 1985, p. 1657, § 1; Code 1981, § 20-2-307, as redesignated by Ga. L. 1987, p. 1169, § 1.)

**Editor's notes.** — See the Editor's note at the beginning of this part for informa-

tion as to the redesignation of the former provisions of this Code section.

### **20-2-308. Reserved.**

**Editor's notes.** — Ga. L. 1987, p. 1169, § 1, effective July 1, 1987, in effect redesignated the former provisions of this Code

section, concerning maintenance of records on instructional programs and grants, as Code Section 20-2-321.

### **20-2-309. Reserved.**

**Editor's notes.** — Ga. L. 1987, p. 1169, § 1, effective July 1, 1987, in effect reserved this Code section designation for

future enactment of provisions of this part.

### **20-2-310. Student directory information; registering to vote and with selective service; pledge of allegiance.**

(a) Any public school at the secondary level which provides access to the campus or to student directory information to persons or groups which make students aware of occupational or educational options shall provide access to the campus and student directory information on at least the same basis to official recruiting representatives of the military forces of the state and the United States for the purpose of informing students of educational and career opportunities available in the military.

(b) Each eligible student in the public schools of this state shall be apprised of his or her right to register as an elector and to vote in elections and of any obligation to register with the Selective Service System. Each eligible student shall be given an opportunity, arranged by the school administration, to register to vote at his or her school during the month of April of each year. The State Board of Education shall promulgate rules and regulations to carry out this Code section. An excused absence of a student to register or vote, at the discretion of the local unit of administration, shall not exceed one school day.

(c)(1) Each student in the public schools of this state shall be afforded the opportunity to recite the Pledge of Allegiance to the flag of the United States of America during each school day. It shall be the duty of each local board of education to establish a policy setting the time and manner for recitation of the Pledge of Allegiance. Such policy shall be established in writing and shall be distributed to each teacher within the school.

(2) The State School Superintendent shall prepare for the use of the public schools of this state a program of instruction, subject to the approval of the State Board of Education, in the correct use and display of the flag of the United States of America which shall



include, as a minimum, specific instruction regarding respect for such flag and its display and use as provided by federal law and regulation, and under such regulations and instructions as may best meet the varied requirements of the different grades in such schools. However, such instruction shall include, as a minimum, the provisions of 36 U.S.C. Sections 170 through 177. (Code 1981, §§ 20-2-302 — 20-2-304, as enacted by Ga. L. 1985, p. 1657, § 1; Code 1981, § 20-2-310, as redesignated by Ga. L. 1987, p. 1169, § 1; Ga. L. 1997, p. 446, § 1; Ga. L. 2001, p. 743, § 1.)

**Cross references.** — Pledge of allegiance to state flag, § 50-3-2.

**Editor's notes.** — See the Editor's notes under the Article 6 heading for information as to the repeal of the former Code section.

**U.S. Code.** — The military Selective Service Act, requiring registration and referred to in this Code section, is codified at 50 U.S.C. 451 et seq.

**Law reviews.** — For article, "Education Law," see 53 Mercer L. Rev. 281 (2001). For article, "Ritual, Emotion, and Political Belief: The Search for the Constitutional Limit to Patriotic Education in Public Schools," see 43 Ga. L. Rev. 447 (2009).

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 76 (2001).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 287 et seq.

### 20-2-311. State Board of Postsecondary Vocational Education.

Repealed by Ga. L. 1988, p. 1252, § 1, effective July 1, 1988.

**Editor's notes.** — This Code section was based on Ga. L. 1985, p. 1657, § 1; Ga. L. 1987, p. 575, § 2; and Ga. L. 1987, p. 1169, § 1.

### 20-2-312. State program for middle school children during nonschool hours; goals; annual review.

Reserved. Repealed by Ga. L. 2012, p. 358, § 24/HB 706, effective July 1, 2012.

**Editor's notes.** — This Code section was based on Ga. L. 1997, p. 1680, § 1.

### 20-2-313. J. William Fulbright Educational Exchange Program.

Employees of Department of Education governed by the State Board of Education shall be authorized to participate in the J. William Fulbright Educational Exchange Program managed and coordinated through the Bureau of Educational and Cultural Affairs pursuant to 22 U.S.C. 2460 the same as school teachers in the local public school systems of this state. Such employees of the Department of Education may obtain a continuous leave of absence with pay for a period not to

exceed 12 months when an exchange teacher through the J. William Fulbright Educational Exchange Program will occupy such employee's position during such leave of absence and the state is not liable for any compensation or the provision of other benefits to such exchange teacher while performing the duties of the state employee. The State Board of Education shall promulgate any rules and regulations necessary and execute any required contracts to enable the State Department of Education to participate in the J. William Fulbright Educational Exchange Program, to assure a state employee's right to return to his or her previous position at the expiration of the leave of absence during participation in such program, and to protect the state from any liabilities with respect to the performance of any duties or functions for the state by an exchange teacher. (Code 1981, § 20-2-313, enacted by Ga. L. 1998, p. 182, § 1.)

**20-2-314. Development of rape prevention, personal safety education, and teen dating violence prevention programs.**

The State Board of Education shall develop, with input from appropriate experts, such as rape crisis centers and family violence shelters, a rape prevention and personal safety education program and a program for preventing teen dating violence for grade eight through grade 12 which are consistent with the core curriculum provided for in Code Section 20-2-140. Local boards may implement such programs at any time and for any grade level local boards find appropriate, and the state board shall encourage the implementation of such programs. In addition, the state board shall make information regarding such programs available to the Board of Regents of the University System of Georgia. (Code 1981, § 20-2-314, enacted by Ga. L. 2000, p. 163, § 1; Ga. L. 2003, p. 915, § 1.)

**Cross references.** — Rape, § 16-6-1. Information for victims of rape, § 17-18-2.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2000, Code Sections 20-2-314 and 20-2-315, as enacted by Ga.L. 2000, p. 1129, § 2, were redesignated as Code Sections 20-2-315 and 20-2-316, respectively.

Pursuant to Code Section 28-9-5, in 2000, "eight" was substituted for "8" near the middle of the first sentence.

Pursuant to Code Section 28-9-5, in 2003, a comma was deleted following "crisis centers" in the first sentence.

**Law reviews.** — For survey article on education law for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 237 (2003).

For article, "The Georgia Roundtable Discussion Model: Another Way to Approach Reforming Rape Laws," see 20 Ga. St. U. L. Rev. 565 (2004).

**20-2-315. Gender discrimination prohibited; authorized separate gender teams; equal athletic opportunity; physical education classes; employee designated to monitor compliance; grievance procedures; reporting requirements.**

(a) No student shall, on the basis of gender, be excluded from participation in, be denied the benefits of, be treated differently from another student, or otherwise be discriminated against in any interscholastic or intramural athletics offered by a local school system, and no local school system shall provide any such athletics separately on such basis.

(b) Notwithstanding the requirements of subsection (a) of this Code section, a local school system may operate or sponsor separate teams for members of each gender where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a local school system operates or sponsors a team in a particular sport for members of one gender but operates or sponsors no such team for members of the other gender, and athletic opportunities for members of that gender in that particular sport have previously been limited, members of the excluded gender must be allowed to try out for the team offered unless the sport involved is a contact sport. Nothing in this subsection shall be construed to limit the authority of a local school system to operate or sponsor a single team for a contact sport that includes members of both genders. As used in this subsection, the term "contact sport" includes boxing, wrestling, rugby, ice hockey, football, basketball, and any other sport the purpose or major activity of which involves bodily contact.

(c) A local school system which operates or sponsors interscholastic or intramural athletics shall undertake all reasonable efforts to provide equal athletic opportunity for members of both genders. In determining whether equal opportunities are available the following factors shall be considered:

- (1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both genders;
- (2) The provision of equipment and supplies;
- (3) Scheduling of games and practice time;
- (4) Travel allowance;
- (5) Opportunity to receive coaching and academic tutoring;
- (6) Assignment and compensation of coaches and tutors;



- (7) Provision of locker rooms and practice and competitive facilities;
- (8) Provision of medical and training facilities and services; and
- (9) Publicity.

Unequal aggregate expenditures for members of each gender or unequal expenditures for male and female teams if a local school system operates or sponsors separate teams will not constitute noncompliance with this subsection, but the failure to provide essential funds for the basic operations of teams for one gender may be considered in assessing equality of opportunity for members of each gender. Nothing in Code Section 20-2-411 shall be construed to limit the authority of a local school system to expend school tax funds as authorized by Article VIII, Section VI, Paragraph I(b) of the Constitution in order to comply with the requirements of this Code section.

(d) A local school system may provide separate toilet, locker room, and shower facilities on the basis of gender, but such facilities shall be comparable to such facilities provided for students of the other gender.

(e) This Code section does not prohibit the grouping of students in physical education classes by gender.

(f)(1) Subject to the provisions of paragraph (3) of this subsection, if a local school system sponsors an athletic activity or sport at a particular school that is similar to a sport for which an institution in the University System of Georgia offers an athletic scholarship, it must sponsor the athletic activity or sport for which a scholarship is offered at that school. This paragraph does not affect academic requirements for participation nor prevent the local school system from sponsoring activities in addition to those for which scholarships are provided.

(2) Two athletic activities or sports that are similar may be offered simultaneously.

(3) If a local school system demonstrates by a bona fide survey of eligible students at the school, which is approved by the Department of Education for compliance with generally accepted opinion survey principles regarding neutral wording and other matters, that there is insufficient interest among students at the school to field a team described in paragraph (1) of this subsection, then the local school system shall not be required to sponsor such athletic activity or sport at that school. The exemption provided for by this paragraph shall be valid for 24 months following the date when the most recent bona fide student survey demonstrating a lack of student interest was completed, unless a new bona fide student survey is conducted within the 24 month period that demonstrates sufficient interest to field a team.

If such a new bona fide student survey demonstrates such sufficient interest, then the local school system must comply with paragraph (1) of this subsection during the local school system's next fiscal year and until such time as a new bona fide student survey demonstrates insufficient interest to field a team described in paragraph (1) of this subsection. A local school system shall conduct the bona fide student survey described in this paragraph regarding interest in a team described in paragraph (1) of this subsection upon the request of nine students at the school, but no more frequently than once every 12 months.

(4) Nothing in this subsection shall be construed to preclude the application of generally applicable policies or rules regarding the cancellation of an athletic activity or sport due to lack of student participation in scheduled practices or contests.

(g) Each local school system shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this Code section, including the investigation of any complaint communicated to such local school system alleging its noncompliance with this Code section. The employee designated under this subsection may be the same person required to be designated under 34 C.F.R. Section 106.8. The local school system annually shall notify all its students of the name, office address, and office telephone number of the employee or employees appointed pursuant to this subsection. Such notification may be included in a student handbook distributed pursuant to Code Section 20-2-736.

(h) Each local school system shall adopt and publish grievance procedures providing for prompt and equitable resolution of written student complaints, including complaints brought by a parent or guardian on behalf of his or her minor child who is a student, alleging any action which would be a violation of this Code section. Such procedures shall require that:

(1) The employee designated under subsection (g) of this Code section shall render his or her decision in writing no later than 30 days after receipt of the complaint, and such decision shall set forth the essential facts and rationale for the decision;

(2) A copy of such decision shall be provided to the complainant within five days of the date of the decision; and

(3) A complainant shall have a right to appeal such decision to the local board within 35 days of the date of the decision.

(i)(1) A complainant may appeal a decision of a local board that is rendered under subsection (h) of this Code section in accordance with the procedures specified in Code Section 20-2-1160. If the State Board

of Education determines that a local school system has failed to comply with this Code section, then the state board shall provide the local school system with opportunities to prepare a corrective plan. If the state board determines that a corrective plan of the local school system adequately plans and provides for future compliance with this Code section, then the state board shall approve the plan and direct the local school system to implement such plan.

(2) If, upon a complaint filed pursuant to subsection (h) of this Code section after one year following the date of a state board order directing implementation of a corrective plan pursuant to paragraph (1) of this subsection but within four years of the date of such order, the state board determines that the local school system which was subject to such order has willfully failed to comply with this Code section, the state board may, after consideration of the local school system's efforts to implement the corrective plan approved in the earlier proceeding and of any other corrective plan that may be submitted by the local school system, transmit a certification of such determination to the Department of Community Affairs. If the state board's determination of noncompliance is later reversed or vacated upon appeal, the state board shall immediately notify the Department of Community Affairs of such action.

(3) If, upon a complaint filed pursuant to subsection (h) of this Code section after one year following the date of a state board certification to the Department of Community Affairs pursuant to paragraph (2) of this subsection but within four years of the date of such order, the state board determines that the local school system which was subject to such order has willfully failed to comply with this Code section, the state board may, after consideration of the local school system's efforts to implement a corrective plan approved in an earlier proceeding and of any other corrective plan that may be submitted by the local school system, order that a team or teams within the local school system or school within the local school system shall not participate in interscholastic postseason athletic contests and that participation in violation of such an order may result in withholding of state funds allotted pursuant to Code Section 20-2-186. An order of the state board barring participation in interscholastic postseason athletic contests shall be made and announced before the beginning of a school year.

(4) If, upon a complaint filed pursuant to subsection (h) of this Code section after one year following the date of a state board order prohibiting participation in interscholastic postseason athletic contests pursuant to paragraph (3) of this subsection but within four years of the date of such order, the state board determines that the local school system which was subject to such order has willfully



failed to comply with this Code section, the state board may, after consideration of the local school system's efforts to implement a corrective plan approved in an earlier proceeding and of any other corrective plan that may be submitted by the local school system, withhold state funds that are allotted pursuant to Code Section 20-2-186 in an amount that the state board determines is sufficient to secure the local school system's compliance with this Code section. In the event that state funds are withheld pursuant to this paragraph, such funds shall later be allotted to the local school system at such time as the state board determines that the local school system is in compliance with this Code section.

(j) The Department of Education shall publish an annual report of local school systems to include information regarding expenditures and participation rates for each gender and such other information as the state board and department deem relevant. (Code 1981, § 20-2-315, enacted by Ga. L. 2000, p. 1129, § 2; Ga. L. 2010, p. 157, § 1/HB 910.)

**The 2010 amendment**, effective May 20, 2010, rewrote subsection (j).

**Cross references.** — Grants and other disbursements of funds, § 50-8-8.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2000, Code Section 20-2-314, as enacted by Ga. L. 2000, p. 1129, § 2, was redesignated as Code Section 20-2-315.

Pursuant to Code Section 28-9-5, in 2000, "contests" was substituted for "con-

tents" in the first sentence of paragraph (i)(4).

Pursuant to Code Section 28-9-5, in 2001, a comma was inserted following "basketball" in the last sentence in subsection (b).

**Editor's notes.** — Ga. L. 2000, p. 1129, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Equity in Sports Act.'"

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 293 et seq.

**ALR.** — What constitutes reverse sex or

gender discrimination against males violative of federal constitution or statutes — nonemployment cases, 166 ALR Fed. 1.

## 20-2-316. Athletic association defined; involvement of association in high school athletics.

(a) As used in this Code section, the term "athletic association" means any association of schools or any other similar organization which acts as an organizing, sanctioning, scheduling, or rule-making body for interscholastic athletic events in which public high schools in this state participate.

(b) No high school which receives funding under this article shall participate in, sponsor, or provide coaching staff for interscholastic sports events which are conducted under the authority of, conducted under the rules of, or scheduled by any athletic association unless the charter, bylaws, or other governing documents of such athletic associ-

ation comply with this Code section. In order to comply with this Code section, such charter, bylaws, or other governing documents shall provide that:

(1) The athletic association shall comply with the requirements of subsections (a) through (f) of Code Section 20-2-315, as those requirements relate to the athletic association's functions of organizing, sanctioning, scheduling, or rule making for events in which public high schools participate;

(2) The athletic association shall comply with the requirements of Article 4 of Chapter 18 of Title 50, relating to the inspection of public records, and Chapter 14 of Title 50, relating to open and public meetings, to the extent that such records and meetings relate to the athletic association's activities with respect to public high schools; provided, however, that such athletic association shall not be required to comply with such statutes or to conduct open and public meetings or provide inspection of records where the sole subject of such meeting or record pertains to the academic records or performance of an individual student or the eligibility of an individual student to participate or to continue to participate in sponsored events or contests based on academics; provided, further, however, that where a meeting or record of such association is devoted in part to matters excepted in the preceding proviso, any portion of the meeting or record not subject to such exception shall be open to the public; and

(3) The athletic association shall, no later than October 1, 2003, and every year thereafter, submit a report to the General Assembly regarding its compliance with paragraph (1) of this subsection. Such report shall address the number, type, and disposition of written requests for the association to organize and administer regional or state events for additional or different sports; written requests for information regarding the types of athletic events for public high school students that the association organizes and administers; and written inquiries and complaints received by the association with respect to gender discrimination in connection with public high school events. The report shall address all such written requests, inquiries, and complaints, regardless of whether such request, inquiry, or complaint is made by letter, e-mail, memorandum, or any other form of written communication. Each report shall cover the time period beginning on July 1 of the previous year and ending on June 30 of the year in which the report is due. The initial report due on October 1, 2003, shall cover the time periods of July 1, 2000, through June 30, 2001; July 1, 2001, through June 30, 2002; and July 1, 2002, through June 30, 2003. In addition, the athletic association shall have in effect a policy requiring notification to persons who

make such requests, inquiries, or complaints verbally that such request, inquiry, or complaint will not be included in the association's reporting to the General Assembly regarding compliance with this Code section unless such request, inquiry, or complaint is made in writing. (Code 1981, § 20-2-316, enacted by Ga. L. 2000, p. 1129, § 2.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2000, Code Section 20-2-315, as enacted by Ga. L. 2000, p. 1129, § 2, was redesignated as Code Section 20-2-316.

Pursuant to Code Section 28-9-5, in 2000, "20-2-315" was substituted for "20-2-314" in paragraph (b)(1).

**Editor's notes.** — Ga. L. 2000, p. 1129, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Equity in Sports Act.'"

### **20-2-316.1. Eligibility conditions of high school athletic associations.**

(a) As used in this Code section, the term "athletic association" means any association of schools or any other similar organization which acts as an organizing, sanctioning, scheduling, or rule-making body for interscholastic athletic events in which public schools in this state participate.

(b) No high school which receives funding under this article shall participate in, sponsor, or provide coaching staff for interscholastic sports events which are conducted under the authority of, conducted under the rules of, or scheduled by any athletic association unless the charter, bylaws, or other governing documents of such athletic association provide that a student shall not lose eligibility to participate as a team member on an interscholastic sports team solely because such student participates during the school year at any time outside of regular season, including playoffs, in a national competitive event, such as an all-star or showcase event, that is not sanctioned by such athletic association. (Code 1981, § 20-2-316.1, enacted by Ga. L. 2006, p. 161, § 1/ HB 1241.)

### **20-2-317. Inappropriate means of encouraging and rewarding student athletes; penalty; notice to students.**

(a) As used in this Code section, the term:

(1) "Immediate family" shall mean a student-athlete's spouse, child, parent, stepparent, grandparent, grandchild, brother, sister, mother-in-law, father-in-law, sister-in-law, brother-in-law, nephew, niece, aunt, uncle, first cousin, and the spouses and guardians of any such individuals.



(2) “Person” shall mean an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, firm, or any other legal or commercial entity.

(3) “Student-athlete” shall mean a student at any public or private institution of postsecondary education in this state or a student residing in this state who has applied, is eligible to apply, or may be eligible to apply in the future to a public or private institution of postsecondary education who engages in, is eligible to engage in, or may be eligible to engage in any intercollegiate sporting event, contest, exhibition, or program.

(b) Except as provided in subsection (c) of this Code section, no person shall give, offer, promise, or attempt to give any money or other thing of value to a student-athlete or member of a student-athlete’s immediate family:

(1) To induce, encourage, or reward the student-athlete’s application, enrollment, or attendance at a public or private institution of postsecondary education in order to have the student-athlete participate in intercollegiate sporting events, contests, exhibitions, or programs at that institution; or

(2) To induce, encourage, or reward the student-athlete’s participation in an intercollegiate sporting event, contest, exhibition, or program.

(c) This Code section shall not apply to:

(1) Any public or private institution of postsecondary education or to any officer or employee of such institution when the institution or officer or employee of such institution is acting in accordance with an official written policy of such institution which is in compliance with the bylaws of the National Collegiate Athletic Association;

(2) Any intercollegiate athletic awards approved or administered by the student-athlete’s institution;

(3) Grants-in-aid or other full or partial scholarships awarded to a student-athlete or administered by an institution of postsecondary education;

(4) Members of the student-athlete’s immediate family; and

(5) Money or things of value given by a person to a student-athlete or the immediate family of a student-athlete that do not exceed \$250.00 in value in the aggregate on an annual basis.

(d) Any person that violates the provisions of subsection (b) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature.

(e) Each public and private high school in this state shall advise in writing at the beginning of each sports season each student who participates in any athletic program sponsored by the school of the provisions of this Code section and shall provide each student with information concerning the effect of receiving money or other things of value on the student's future eligibility to participate in intercollegiate athletics. The provisions of this subsection shall not apply to intermural athletic programs at such schools. (Code 1981, § 20-2-317, enacted by Ga. L. 2003, p. 707, § 1; Ga. L. 2005, p. 60, § 20/HB 95.)

**Cross references.** — Uniform Athlete Agents Act, § 43-4A-1 et seq. Institution of higher education and relationship to athlete agent, § 43-4A-18. Athletic trainers, § 43-5-1 et seq.

**Law reviews.** — For survey article on

education law for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 237 (2003).

For note on the 2003 enactment of this Code section, see 20 Ga. St. U. L. Rev. 134 (2003).

### OPINIONS OF THE ATTORNEY GENERAL

**Limited applicability of section.** — Legal entities and individuals who seek to obtain collegiate athletic scholarships for high school athletes do not fall under the

provisions of O.C.G.A. § 20-2-317 or O.C.G.A. § 20-2-318, or the 2003 amendments to O.C.G.A. Ch. 4A, T. 43. 2004 Op. Att'y Gen. No. U2004-1.

### 20-2-318. Intercollegiate athletics; remedies for improper activities.

(a) As used in this Code section, the term:

(1) "Immediate family" shall mean a student-athlete's spouse, child, parent, stepparent, grandparent, grandchild, brother, sister, mother-in-law, father-in-law, sister-in-law, brother-in-law, nephew, niece, aunt, uncle, first cousin, and the spouses and guardians of any such individuals.

(2) "Person" shall mean an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, firm, or any other legal or commercial entity.

(3) "Student-athlete" shall mean a student at any public or private institution of postsecondary education in this state or a student residing in this state who has applied, is eligible to apply, or may be eligible to apply in the future to a public or private institution of postsecondary education who engages in, is eligible to engage in, or may be eligible to engage in any intercollegiate sporting event, contest, exhibition, or program.

(b) Each public and private institution of postsecondary education located in this state that participates or engages in intercollegiate athletics shall have a right of action against any person who engages in

any activity concerning student-athletes that results in the institution being penalized, disqualified, or suspended from participation in intercollegiate athletics by a national association for the promotion and regulation of intercollegiate athletics, by an athletic conference or other sanctioning body, or by reasonable self-imposed disciplinary action taken by such institution to mitigate sanctions likely to be imposed by such organizations as a result of such activity. The institution shall be entitled to recover all damages which are directly related to or which flow from and are reasonably related to such improper activity and to such penalties, disqualifications, and suspensions. Damages shall include, but not be limited to, loss of scholarships, loss of television revenue, loss of bowl revenue, and legal and other fees associated with the investigation of the activity and the representation of the institution before the sanctioning organizations in connection with the investigation and resolution of such activity. If the institution is the prevailing party in its cause of action, it shall be entitled to an award of court costs, costs of litigation, and reasonable attorney's fees. The institution may also request and the court may enter an injunction against any person found liable from having any further contact with the institution, its student-athletes, and student-athletes who have expressed or might express an interest in attending the institution and from attending athletic contests, exhibitions, games, or other such events in which one or more of the institution's student-athletes is participating. The right of action and remedies under this Code section are in addition to all other rights of action which may be available to the institution. (Code 1981, § 20-2-318, enacted by Ga. L. 2003, p. 707, § 1; Ga. L. 2005, p. 60, § 20/HB 95.)

**Cross references.** — Uniform Athlete Agents Act, § 43-4A-1 et seq. enactment of this Code section, see 20 Ga. St. U. L. Rev. 134 (2003).  
**Law reviews.** — For note on the 2003

OPINIONS OF THE ATTORNEY GENERAL

**Limited applicability of section.** — provisions of O.C.G.A. § 20-2-317 or Legal entities and individuals who seek to obtain collegiate athletic scholarships for high school athletes do not fall under the O.C.G.A. § 20-2-318, or the 2003 amendments to O.C.G.A. Ch. 4A, T. 43. 2004 Op. Att'y Gen. No. U2004-1.

20-2-319. Prayers prior to athletic event held on the campus of a private school not to be prohibited.

- (a) No law or regulation of this state shall prohibit or be construed as prohibiting or discouraging a private school from conducting a prayer prior to an athletic event held on the campus of the private school.
- (b) No athletic team from any public school in this state shall be prohibited by state law or regulation from participating in an athletic



event held on the campus of a private school in this state for the reason that the private school conducts a prayer prior to such athletic event.

(c) No school which receives funding under this article shall participate in, sponsor, or provide coaching staff for interscholastic sports events which are conducted under the authority of, conducted under the rules of, or scheduled by any athletic association which prohibits or discourages a private school from conducting a prayer prior to an athletic event held on the campus of the private school.

(d) As used in this Code section, the term "athletic association" means any association of schools or any other similar organization which acts as an organizing, sanctioning, scheduling, or rule-making body for interscholastic athletic events in which public schools in this state participate. (Code 1981, § 20-2-319, enacted by Ga. L. 2005, p. 658, § 1/HB 678.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2005, Code Section 20-2-319, as enacted by Ga. L. 2005, p. 795, § 2, was redesignated as Code Section 20-2-319.1 and Code Section 20-2-319, as enacted by Ga. L. 2005, p. 1511, § 2, was redesignated as Code Section 20-2-319.2.

### **20-2-319.1. Georgia Virtual School.**

(a) The State Board of Education is authorized to establish the Georgia Virtual School whereby students may enroll in state funded courses via the Internet or in any other manner not involving on-site interaction with a teacher. Any Georgia student who is age 21 or younger shall be eligible to enroll in the Georgia Virtual School, at no cost to the student. The State Board of Education is authorized to promulgate rules and regulations pertaining to the Georgia Virtual School. Such rules and regulations, if established, shall include, at a minimum, a process for students to enroll in Georgia Virtual School courses and a process whereby a student's grade in the course is reported on the student's transcript. All teachers who provide instruction through the Georgia Virtual School shall be certified by the Professional Standards Commission. A local school system shall not prohibit any student from taking a course through the Georgia Virtual School, regardless of whether the school in which the student is enrolled offers the same course.

(b)(1) The department is authorized to establish a Georgia Virtual School grant account with funds appropriated by the General Assembly. The department shall use funds from this grant account to pay for costs associated with the Georgia Virtual School incurred by the department, including, but not limited to, actual costs associated with the maintenance of the Georgia Virtual School, such as new course development, credit recovery, blended learning training, and operating a clearinghouse.

(2) The local school system shall pay to the department costs for tuition, materials, and fees directly related to the approved course taken by a student in its school system through the Georgia Virtual School; provided, however, that in no event shall the amount of tuition charged to the local school system exceed \$250.00 per student per semester course.

(c) The Georgia Virtual School shall not be considered a school for purposes of Article 2 of Chapter 14 of this title. (Code 1981, § 20-2-319.1, enacted by Ga. L. 2005, p. 795, § 2/SB 33; Ga. L. 2012, p. 893, § 4/SB 289.)

**The 2012 amendment**, effective July 1, 2012, in subsection (a), deleted “, provided that public school students shall be given priority” following “at no cost to the student” at the end of the second sentence, deleted “, including provisions allowing for students to participate in such courses in excess of any maximum number of courses allowed per year at a tuition rate to be established by the State Board of Education,” preceding “and a process” in the fourth sentence, and added the last sentence; and, in subsection (b), added the paragraph (b)(1) designation, in paragraph (b)(1), deleted the former second sentence, which read: “The amount of funds requested by the state board for this account shall be the amount that the participating students would have earned under this article if those students had been in equivalent general education programs in a local school system for that portion of the instructional day in which the students were actually enrolled in a

Georgia Virtual School course.”, in the last sentence substituted “associated with the maintenance of the Georgia Virtual School, such as new course development, credit recovery, blended learning training, and operating a clearinghouse” for “of tuition, materials, and fees directly related to the approved courses taken by the students through the Georgia Virtual School”, and added paragraph (b)(2).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2005, Code Section 20-2-319, as enacted by Ga. L. 2005, p. 795, § 2, was redesignated as Code Section 20-2-319.1 and Code Section 20-2-319, as enacted by Ga. L. 2005, p. 1511, § 2, was redesignated as Code Section 20-2-319.2.

**Administrative rules and regulations.** — Georgia virtual school, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Instructional Technology, Sec. 160-8-1-01.

## JUDICIAL DECISIONS

**Child enrolled in online courses qualified for parental support.** — Trial court erred in finding that a child’s enrollment in online courses did not satisfy a modification order’s requirement that the child “attend” school in order to have the father pay child support beyond the child’s attainment of majority; once a child en-

rolls in approved online courses in an effort to graduate from a secondary school, the child’s online attendance constitutes “attending school” for purposes of extending child support beyond the child’s attainment of the age of majority. *Draughn v. Draughn*, 288 Ga. 734, 707 S.E.2d 52 (2011).

**20-2-319.2. School interscholastic extracurricular athletic policy providing for the use of a single, comprehensive, preparticipation physical examination form.**

(a) The State Board of Education shall develop, with input from appropriate experts and organizations, a school interscholastic extracurricular athletic policy that provides for the use of a single, comprehensive, preparticipation physical examination form.

(b) As used in this Code section, the term “participation” means participation in sports try-outs and practices and actual interscholastic extracurricular sports competition.

(c) When a school or school district has a policy which requires students who participate in extracurricular sports to have a physical examination prior to participation, the person conducting the physical examination shall use the State Board of Education approved form pursuant to subsection (d) of this Code section, provided that the form may at the option of the local board include additional elements.

(d) The State Board of Education shall appoint an appropriate committee to make recommendations concerning the comprehensive, preparticipation physical examination form to be used for physical examinations referred to in this Code section. The committee may consult or work with appropriate voluntary organizations and shall give due consideration to the recommendations of the American Academy of Pediatrics on this subject. The final form shall be adopted and may from time to time be modified by rule by the State Board of Education. (Code 1981, § 20-2-319.2, enacted by Ga. L. 2005, p. 1511, § 2/SB 272.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2005, Code Section 20-2-319, as enacted by Ga. L. 2005, p. 795, § 2, was redesignated as Code Section 20-2-319.1 and Code Section 20-2-319, as enacted by Ga. L. 2005, p. 1511, § 2, was redesignated as Code Section 20-2-319.2.

**Editor’s notes.** — Ga. L. 2005, p. 1511, § 1/SB 272, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Ryan Boslet Bill.’”

**20-2-319.3. Online clearinghouse of interactive distance learning courses.**

(a) This Code section shall be known and may be cited as the “Online Clearinghouse Act.”

(b) As used in this Code section, the term:

(1) “Charter school” means a local charter school, as defined in paragraph (7) of Code Section 20-2-2062, a state chartered special



school, as defined in paragraph (16) of Code Section 20-2-2062, and a commission charter school, as defined in paragraph (2) of Code Section 20-2-2081.

(2) “Clearinghouse” means the clearinghouse established pursuant to subsection (b) of this Code section.

(3) “One credit” and “half-credit” mean the customary academic unit of credit granted for secondary school courses in this state.

(4) “Student’s school system” means the local school system operating the school in which the student is lawfully enrolled.

(c)(1) The department shall establish a clearinghouse of interactive distance learning courses and other distance learning courses delivered via a computer-based method offered by local school systems and charter schools for sharing with other local school systems and charter schools for the fee set pursuant to subsection (e) of this Code section. The department shall review the content of each course prior to including it in the clearinghouse to ensure that it meets state curriculum standards. The department is authorized to approve courses for inclusion in the clearinghouse if the content meets state curriculum standards, the applicant meets all technical requirements, and the course is delivered by a highly qualified teacher who exhibits exceptional teaching skills and methodology as certified by the local school system or charter school, which teacher’s credentials and skills shall be subject to review and approval by the department.

(2) To offer a course through the clearinghouse, a local school system or charter school shall apply to the department in a form and manner prescribed by the department. The application for each course shall describe the course of study in as much detail as required by the department, the qualification and credentials of the teacher, the number of hours of instruction, the technology required to deliver and receive the course, the technical capacity of the local school system or charter school to deliver the course, the times that the local school system or charter school plans to deliver the course, and any other information required by the department. The department may require local school systems and charter schools to include in their applications information recommended by the State Board of Education.

(3) The department shall review the technical specifications of each application submitted pursuant to paragraph (2) of this subsection and shall determine if the local school system or charter school can satisfactorily deliver the course through the technology necessary for that delivery. All such courses shall be delivered only in accordance with technical specifications approved by the department.

(4) The department may request additional information from a local school system or charter school that submits an application

pursuant to paragraph (2) of this subsection, if the department determines that such information is necessary. The department may negotiate changes in the proposal to offer a course, if the department determines that changes are necessary in order to approve the course.

(5) The department shall catalog each course approved for the clearinghouse, through a print or electronic medium, displaying the following:

(A) Information necessary for a student and the student's parent, guardian, or custodian and the student's school system or the student's charter school to decide whether to enroll in the course; and

(B) Instructions for enrolling in that course, including deadlines for enrollment.

(6) The department shall identify the copyright owner of each course in the catalog and shall assist local school systems and charter schools in understanding the process of registering copyrights and other protections of intellectual property under federal law, if requested.

(d)(1) A student who is enrolled in a school operated by a local school system or in a charter school may enroll in a course included in the clearinghouse only if both of the following conditions are satisfied:

(A) The student's enrollment in the course is approved by the student's school system or the student's charter school; and

(B) The student's school system or the student's charter school agrees to accept for credit the grade assigned by the local school system or charter school delivering the course.

(2) For each student enrolling in a course, the student's school system or the student's charter school shall transmit the student's identification number and the student's name to the local school system or charter school delivering the course. The school system or charter school delivering the course may request from the student's school system or the student's charter school other information from the student's school record. The student's school system or the student's charter school shall provide the requested information only in accordance with state law.

(3) The student's school system or the student's charter school shall determine the manner in which and facilities at which the student shall participate in the course consistent with specifications for technology and connectivity adopted by the department.

(4) A student may withdraw from a course prior to the end of the course only by a date and in a manner prescribed by the student's school system or the student's charter school.

(5) A student who is enrolled in a school operated by a local school system or in a charter school and who takes a course included in the clearinghouse shall be counted in the funding formula of the student's school system or the student's charter school as if the student were taking the course from the student's school system or the student's charter school.

(e)(1) The department shall set appropriate fees for one-credit and half-credit courses.

(2) The department shall proportionally reduce the fee for any student who withdraws from a course prior to the end of the course pursuant to paragraph (4) of subsection (d) of this Code section.

(3) For each student enrolled in a course included in the clearinghouse, and not later than the last day of that course, the department shall deduct the amount of the fee for that course from the student's school system or charter school allotment and shall pay that amount to the local school system or charter school delivering the course.

(4) From the funds received pursuant to paragraph (3) of this subsection, the local school system or charter school delivering the course shall pay the teacher conducting the course such additional amount of compensation as set by the department based on the number of students taking the course and the course fee.

(f) The grade for a student who enrolls in a course included in the clearinghouse shall be assigned by the local school system or charter school that delivers the course and shall be transmitted by that school system or charter school to the student's school system or the student's charter school.

(g) The department may determine the manner in which a course included in the clearinghouse may be offered as a dual enrollment program, may be offered to students who are enrolled in nonpublic schools or a home study program pursuant to Code Section 20-2-690, or may be offered at times outside the normal school day or school week, including any necessary additional fees and methods of payment for a course so offered.

(h) The department shall promulgate rules and regulations for the implementation of this Code section. The department may coordinate the clearinghouse established pursuant to this Code section with the Georgia Virtual School established pursuant to Code Section 20-2-319.1.



(i) Nothing in this Code section shall prohibit a local school system or charter school from offering an interactive distance learning course or other distance learning course using a computer-based method through any means other than the clearinghouse established and maintained under this Code section. (Code 1981, § 20-2-319.3, enacted by Ga. L. 2012, p. 660, § 1/HB 175.)

**Effective date.** — This Code section became effective July 1, 2012.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2012, Code

Section 20-2-319.3 as enacted by Ga. L. 2012, p. 893, § 5/SB 289 was redesignated as Code Section 20-2-319.4.

**20-2-319.4. Virtual instruction programs; notice of opportunities; mechanisms for compliance; approved providers; approval status; curriculum plan.**

(a) Beginning with the 2013-2014 school year, each local school system shall provide opportunities to all students in grades three through 12 enrolled in public schools within its boundaries for participation in part-time and full-time virtual instruction program options. Written notice of such opportunities, including an open enrollment period for full-time students of at least 90 days and not ending earlier than 30 days prior to the first day of the school year, shall be provided directly to parents of all students. The purpose of the program shall be to make quality virtual instruction available to students using online and distance learning technology in the nontraditional classroom. The program shall provide at least three options for:

- (1) Full-time virtual instruction for students enrolled in grades three through 12; and
- (2) Part-time virtual instruction for students enrolled in grades three through 12.

A virtual instruction program conducted by a local school system shall include specific provision for at least two full-time options and one part-time option for students enrolled in dropout prevention and academic intervention programs or Department of Juvenile Justice education programs under Code Section 20-2-133.

(b) To provide students with the option of participating in virtual instruction programs as required by subsection (a) of this Code section, a local school system may apply one or all of the following mechanisms:

- (1) Facilitate enrollment in the Georgia Virtual School established pursuant to Code Section 20-2-319.1;
- (2) Enter into a contract with an approved provider under subsection (c) of this Code section for the provision of a full-time program under paragraph (1) of subsection (a) of this Code section or a

part-time program under paragraph (2) of subsection (a) of this Code section; or

(3) Enter into an agreement with another local school system or systems to allow the participation of its students in an approved virtual instruction program provided by such other local school system or systems. The agreement shall indicate a process for the transfer of funds.

Contracts and agreements entered into pursuant to paragraph (2) or (3) of this subsection may include multidistrict contractual arrangements that may be executed by a regional educational service agency for its member school systems.

(c) The department shall annually provide local school systems with a list of providers approved to offer virtual instruction programs. To be approved by the department, a provider shall document that it:

(1) Possesses prior, successful experience offering online courses to elementary, middle, or high school students, as demonstrated through quantified student performance improvements for each subject area and grade level provided for consideration as instructional program options;

(2) Assures instructional and curricular quality through a detailed curriculum and student performance accountability plan that addresses every subject and grade level intended for provision within local school system contracts, including:

(A) Courses and programs that meet the nationally recognized standards for K-12 online learning;

(B) Instructional content and services that align with and measure student attainment of proficiency in the state-approved curriculum; and

(C) Mechanisms that determine and ensure that a student has satisfied requirements for grade level promotion and high school graduation with a standard diploma, as appropriate; and

(3) Publishes, in accordance with disclosure requirements adopted by the State Board of Education, for the general public, as part of its application as a provider, and in all contracts negotiated pursuant to this Code section:

(A) Information and data about each full-time and part-time program regarding its curriculum;

(B) School policies and procedures;

(C) Certification status of all administrative and instructional personnel;

(D) Teacher-student ratios;

(E) Student completion and promotion rates; and

(F) Student, educator, and school performance accountability outcomes.

(d) An approved provider shall retain its approved status for a period of five years after the date of the department's approval pursuant to subsection (c) of this Code section as long as the provider continues to comply with all requirements of this Code section; provided, however, that each provider approved by the department for the 2013-2014 school year shall reapply for approval to provide a part-time program for students in grades three through 12.

(e) Each contract with an approved provider shall at a minimum set forth a detailed curriculum plan that illustrates how students will be provided services for, and be measured for attainment of, proficiency in state curriculum requirements for each grade level and subject. (Code 1981, § 20-2-319.4, enacted by Ga. L. 2012, p. 893, § 5/SB 289.)

**Effective date.** — This Code section became effective July 1, 2012. Sections 20-2-319.3 and 20-2-319.4, as enacted by Ga. L. 2012, p. 893, § 5/SB 289

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2012, Code Sections 20-2-319.4 and 20-1-319.5, respectively, were redesignated as Code Sections

**20-2-319.5. Report on assisting local boards in acquiring digital learning.**

No later than December 1, 2012, the Department of Education shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which identifies and explains the best methods and strategies for enabling the department to assist local boards of education in acquiring digital learning at as reasonable prices as possible by providing a plan under which local boards may voluntarily pool their bids for such purchases. The report shall identify criteria that will enable local boards to differentiate between the level of service as well as pricing based upon such factors as the level of student support, the frequency of teacher-student communications, instructional accountability standards, and academic integrity. The report shall also examine ways to increase student access to digital learning. (Code 1981, § 20-2-319.5, enacted by Ga. L. 2012, p. 893, § 5/SB 289.)

**Effective date.** — This Code section became effective July 1, 2012. Section 20-2-319.4 as enacted by Ga. L. 2012, p. 893, § 5/SB 289 was redesignated

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2012, Code as Code Section 20-2-319.5.



PART 15

MISCELLANEOUS PROVISIONS

**Editor's notes.** — Ga. L. 1987, p. 1169, § 1, effective July 1, 1987, in effect created this part by transferring and redesignating former Code Sections 20-2-306, 20-2-307, and 20-2-308 as Code Sections 20-2-320, 20-2-321, and 20-2-322, respectively. See the Editor's notes at the beginning of Part 14 of this article.

**20-2-320. Education Information Steering Committee; identification of data to implement Quality Basic Education Program; state-wide comprehensive educational information network.**

(a) There shall be a state-wide comprehensive educational information system which will provide for the accurate, seamless, and timely flow of information from local and regional education agencies, units of the University System of Georgia, and technical schools and colleges to the state. The system design shall include hardware, software, data, collection methods and times, training, maintenance, communications, security of data, and installation specifications and any other relevant specifications needed for the successful implementation of the system. The state-wide comprehensive educational information system shall not use a student's social security number or an employee's social security number in violation of state or federal law to identify a student or employee. Upon approval of the boards of the respective education agencies, such boards shall issue appropriate requests for proposals to implement a state-wide comprehensive educational information system, subject to appropriation by the General Assembly. The boards of the respective education agencies, at the direction of the Education Coordinating Council, shall initiate contracts with appropriate vendors and local units of administration for the procurement of services, purchase of hardware and software, and for any other purpose as directed by the Education Coordinating Council, consistent with appropriation by the General Assembly.

(b) The State Board of Education, the State Board of the Technical College System of Georgia, the Board of Regents of the University System of Georgia, and the Department of Early Care and Learning shall require an individual student record for each student enrolled which at a minimum includes the data specifications recommended by the steering committee and approved by the Education Coordinating Council. The Professional Standards Commission shall maintain an individual data record for each certificated person employed in a public school.

(c) For the purpose of this article, authorized educational agencies shall be the Department of Education; the Department of Early Care

and Learning; the Board of Regents of the University System of Georgia; the Technical College System of Georgia; the Education Coordinating Council; the Professional Standards Commission; the Office of Student Achievement; the education policy and research components of the office of the Governor; the Office of Planning and Budget; the Senate Budget Office; the House Budget Office; the House Research Office; and the Senate Research Office. Any information collected over the state-wide comprehensive educational information system, including individual student records and individual personnel records, shall be accessible by authorized educational agencies, provided that any information which is planned for collection over the system but which is temporarily being collected by other means shall also be accessible by authorized educational agencies and provided, further, that adequate security provisions are employed to protect the privacy of individuals. All data maintained for this system shall be used for educational purposes only. In no case shall information be released by an authorized educational agency which would violate the privacy rights of any individual student or employee. Information released by an authorized educational agency in violation of the privacy rights of any individual student or employee shall subject the authorized educational agency to all penalties under applicable state and federal law. Any information collected over the state-wide comprehensive educational information system which is not stored in an individual student or personnel record format shall be made available to the Governor and the House and Senate Appropriations, Education, Education and Youth, and Higher Education committees, except information otherwise prohibited by statute. Data which are included in an individual student record or individual personnel record format shall be extracted from such records and made available in nonindividual record format for use by the Governor, committees of the General Assembly, and agencies other than authorized educational agencies.

(d) The Department of Education shall request sufficient funds annually for the operation, training of appropriate personnel, and maintenance and enhancements of the system.

(e) In a phased approach, the state-wide comprehensive educational information system shall be fully completed subject to appropriation by the General Assembly for this purpose. During the phased implementation of the system, highest priority shall be given to the electronic transmission of complete full-time equivalent counts, the uniform budgeting and accounting system, and complete salary data for each local school system. All pre-kindergarten programs, local units of administration for grades kindergarten through 12, technical schools and colleges, public libraries, public colleges and universities, and regional educational service agencies shall provide data as required by their respective boards and agencies. Notwithstanding any provision of



this Code section to the contrary, no local school system shall earn funds under Code Section 20-2-186 for superintendents, assistant superintendents, or principals if the local unit of administration fails to comply with the provisions of this Code section.

(f) Notwithstanding any other provision of law, the Department of Education is authorized to and shall obtain and provide to the Department of Public Safety, in a form to be agreed upon between the Department of Education and the Department of Public Safety, enrollment, attendance, and suspension information regarding minors 15 through 17 years of age reported pursuant to Code Sections 20-2-690 and 20-2-697, to be used solely for the purposes set forth in subsection (a.1) of Code Section 40-5-22. (Code 1981, § 20-2-306, enacted by Ga. L. 1985, p. 1657, § 1; Code 1981, § 20-2-320, as redesignated by Ga. L. 1987, p. 1169, § 1; Ga. L. 1988, p. 1848, § 3; Ga. L. 1990, p. 1256, § 3; Ga. L. 1997, p. 760, § 3; Ga. L. 2000, p. 618, § 58; Ga. L. 2001, p. 4, § 20; Ga. L. 2004, p. 107, § 8; Ga. L. 2004, p. 645, § 16; Ga. L. 2005, p. 60, § 20/HB 95; Ga. L. 2005, p. 798, § 5/SB 35; Ga. L. 2008, p. VO1, § 1-10/HB 529; Ga. L. 2008, p. 335, § 2/SB 435; Ga. L. 2008, p. 1015, § 7/SB 344; Ga. L. 2011, p. 632, § 3/HB 49.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “Board of Technical and Adult Education” in the first sentence of subsection (b).

**Code Commission notes.** — The amendments of subsection (a) of this Code section by Ga. L. 2008, p. VO1, §§ 1-10/HB 529, and Ga. L. 2008, p. 335, § 2/SB 435, irreconcilably conflicted with and were treated as superseded by Ga. L. 2008, p. 1015, § 7/SB 344. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

**Editor’s notes.** — See the Editor’s notes at the beginning of repealed Article 6.1 of this chapter for information as to the repeal of the former Code section.

Ga. L. 1997, p. 760, § 27(a), not codified by the General Assembly, provides: “Except as otherwise provided in subsection (b) of this Code section, this Act shall

become effective on July 1, 1997, and shall apply to offenses committed on or after that date and, except for subsection (b.1) of Code Section 40-5-67.1 as enacted by this Act, this Act shall not apply to offenses committed prior to that date.”

Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

Ga. L. 2008, p. VO1, which amended this Code section, was passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

**Law reviews.** — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U. L. Rev. 203 (1997).

## OPINIONS OF THE ATTORNEY GENERAL

**Collection of individually identifiable data.** — O.C.G.A. § 20-2-320 does not authorize the collection of individually identifiable data on each student, teacher, and school system employee as a part of a

state-wide information system for the implementation of the Quality Basic Education Program. 1987 Op. Att’y Gen. No. 87-1.



**20-2-321. Expense record requirements.**

The State Board of Education shall maintain, according to the specific data categories defined by the task force created under Code Section 20-2-320, expenditure records for each instructional program and other grant program under this article. As a part of its annual budget request, the state board shall specify the teacher-student ratios for each of the program weights and the cost components reflected in the base amount defined in subsection (a) of Code Section 20-2-161. Such information shall be made available to the Appropriations Committees of the House of Representatives and the Senate, the House Education Committee, and the Senate Education and Youth Committee. (Code 1981, § 20-2-308, enacted by Ga. L. 1985, p. 1657, § 1; Code 1981, § 20-2-321, as redesignated by Ga. L. 1987, p. 1169, § 1; Ga. L. 2009, p. 303, § 8/HB 117.)

**Editor's notes.** — See the Editor's notes at the beginning of repealed Article 6.1 of this chapter for information as to the repeal of the former Code section.

Ga. L. 2009, p. 303, § 20/HB 117, not codified by the General Assembly, provides that: "This Act is intended to reflect

the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

**20-2-322. Unfunded programs and activities.**

The State Board of Education shall not initiate or cause to be initiated any program, program expansion, activity, or activity expansion related to or contemplated in this article which would result in additional expenditures by the state if such expenditures are not funded or otherwise contemplated by the General Assembly in an Appropriations Act in force or to be in force within one year. (Code 1981, § 20-2-307, enacted by Ga. L. 1985, p. 1657, § 1; Code 1981, § 20-2-322, as redesignated by Ga. L. 1987, p. 1169, § 1.)

**Editor's notes.** — See the Editor's notes at the beginning of repealed Article

6.1 of this chapter for information as to the repeal of the former Code section.

**20-2-322.1. Environmental Education Council.**

Repealed by Ga. L. 2001, p. 873, § 7, effective July 1, 2001.

**Editor's notes.** — This Code section was based on Code 1981, § 20-2-322.1, enacted by Ga. L. 1992, p. 2331, § 2.

**20-2-323. Unstructured break time for students in kindergarten through grade eight.**

By January 1, 2005, each local board of education shall establish written policies allowing or prohibiting unstructured break time for students in kindergarten and grades one through eight. If the policies allow one or more breaks, the policies shall include but shall not be limited to the following matters:

- (1) The school personnel who will be authorized to decide the length, frequency, timing, and location of breaks;
- (2) Whether breaks can be withheld from students for disciplinary or academic reasons and, if breaks can be withheld, under what conditions;
- (3) How to ensure break time is a safe experience for students, including the responsibility for supervision of students; and
- (4) How to ensure that break time is scheduled so as to provide a support for academic learning.

Local boards shall provide a copy of such policies to the State Board of Education. (Code 1981, § 20-2-323, enacted by Ga. L. 2004, p. 107, § 9.)

**Editor's notes.** — See the Editor's 6.1 of this chapter for information as to notes at the beginning of repealed Article the repeal of the former Code section.

**20-2-324. Internet safety policies in public schools.**

(a) As used in this Code section, the term:

- (1) "Acceptable-use policy" means a policy for Internet usage adopted by a local board of education that meets the requirements of this Code section.
- (2) "Child pornography" means any computer depiction or other material depicting a child under the age of 18 years engaging in sexually explicit conduct or in the simulation of such conduct.
- (3) "Harmful to minors" has the meaning given to such term in Code Section 16-12-100.1.
- (4) "Internet" means a global network that connects computers via telephone lines, fiber networks, or both to electronic information.
- (5) "Obscene" has the meaning given to such term in Code Section 16-12-80.
- (6) "Sexually explicit conduct" has the meaning given to such term in Code Section 16-12-100.

(b) No later than January 1, 2007, each local board of education shall adopt an acceptable-use policy for its school system. At a minimum, an acceptable-use policy shall contain provisions which are reasonably designed to:

(1) Prevent students and employees of the school system from using any computer equipment and communication services owned or leased by the school system for sending, receiving, viewing, or downloading visual depictions of obscenity, child pornography, or material that is harmful to minors;

(2) Establish appropriate measures to be taken against students and school employees who willfully violate the acceptable-use policy; and

(3) Provide for expedited review and resolution of a claim that the policy is denying a student or school employee access to material that is not within the prohibition of the acceptable-use policy.

(c) A local board of education shall take such steps as it deems appropriate to implement and enforce the acceptable-use policy, which shall include, but not be limited to:

(1) Use of software programs reasonably designed to block access to visual depictions of obscenity, child pornography, and material that is harmful to minors; or

(2) Selection of online servers that block access to visual depictions of obscenity, child pornography, and material that is harmful to minors.

(d) Each local school system shall provide, upon written request of a parent or guardian, a copy of the acceptable-use policy adopted pursuant to subsection (b) of this Code section.

(e) The Attorney General and the department shall consult with and assist any local board of education in the development and implementation of an acceptable-use policy pursuant to this Code section.

(f)(1) No later than January 31, 2007, each local board of education shall submit a copy of the acceptable-use policy adopted pursuant to subsection (b) of this Code section to the State Board of Education. Such submission shall also include the identification of any software program or online server that is being utilized to block access to material in accordance with subsection (c) of this Code section.

(2) The State Board of Education shall review each acceptable-use policy and any subsequent revisions submitted pursuant to paragraph (3) of this subsection. If the state board determines after review that a policy or revision is not reasonably designed to achieve the requirements of this Code section, the state board shall provide



written notice to the local board of education explaining the nature of such noncompliance and the local board of education shall have 30 days from the receipt of written notice to correct such noncompliance. The state board may provide an extension to the 30 day period on a showing of good cause.

(3) No revision of an acceptable-use policy which has been approved by the state board pursuant to paragraph (2) of this subsection shall be implemented until such revision is approved by the state board. If the state board fails to disapprove the revision within 60 days after the submission is received, the local board of education may proceed with the implementation of the revision.

(4) The state board shall be authorized to withhold a portion of state funding to a local school system if the local board of education:

(A) Fails to timely submit an acceptable-use policy in accordance with paragraph (1) of this subsection;

(B) Submits an acceptable-use policy that is not reasonably designed to achieve the requirements of this Code section; or

(C) Is not enforcing or is substantially disregarding its acceptable-use policy.

(5) If the state board disapproves an acceptable-use policy of a local board of education or any revision thereof or notifies the local board of education that it is subject to the withholding of funding pursuant to paragraph (4) of this subsection, the local board of education may appeal the decision to the superior court of the county where the local board of education is situated.

(g)(1) The state board shall be responsible for conducting investigations and making written determinations as to whether a local board of education has violated the requirements of this Code section.

(2) If the state board determines that a local board of education is in violation of the requirements of this Code section, it shall direct the local board of education to acknowledge and correct the violation within 30 days and to develop a corrective plan for preventing future recurrences.

(h)(1) Notwithstanding any other provision of this Code section to the contrary, an administrator or supervisor of a local school system, or designee thereof, may disable the software program or online server that is being utilized to block access to material for an adult or for a minor who provides written consent from his or her parent or guardian to enable access to the Internet for bona fide research or other lawful purpose.

(2) Nothing in paragraph (1) of this subsection shall be construed to permit any person to have access to material the character of which is illegal under federal or state law.

(i) A local board of education which is fulfilling the requirements of the federal Children’s Internet Protection Act, P.L. 106-554, is not required to comply with this Code section. (Code 1981, § 20-2-324, enacted by Ga. L. 2006, p. 479, § 2/HB 1055.)

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| <b>Editor’s notes.</b> — Ga. L. 2006, p. 479, § 1/HB 1055, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Child Internet Protection Act.’” | See the Editor’s notes at the beginning of repealed Article 6.1 of this chapter for information as to the repeal of the former Code section. |
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PART 16

BUILDING RESOURCEFUL INDIVIDUALS TO DEVELOP GEORGIA’S ECONOMY

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| <b>Effective date.</b> — This part became effective May 20, 2010. | notes at the beginning of repealed Article 6.1 of this chapter for information as to the repeal of the former Code sections. |
| <b>Editor’s notes.</b> — See the editor’s                         |  |

20-2-325. Short title.

This part shall be known and may be cited as the “Building Resourceful Individuals to Develop Georgia’s Economy Act.” (Code 1981, § 20-2-325, enacted by Ga. L. 2010, p. 186, § 1/HB 400.)

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| <b>Editor’s notes.</b> — See the editor’s notes at the beginning of repealed Article | 6.1 of this chapter for information as to the repeal of the former Code section. |
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20-2-326. Definitions.

For purposes of this part, the term:

- (1) “Articulation” means agreement between a high school and a postsecondary institution regarding the awarding of both secondary and postsecondary credit for a dual enrollment course.
- (2) “Choice technical high school” means a high school, other than the high school to which a student is assigned by virtue of his or her residence and attendance zone, which is designed to prepare a high school student for postsecondary education and for employment in a career field. A choice technical high school may be operated by a local school system or a technical school or college. A choice technical high school may also be operated as a charter school under a governance board composed of parents, employers, and representatives from the local board of education.

(3) “Chronically low-performing high school” means a public high school in this state that has a graduation rate of less than 60 percent for three consecutive years, as determined in accordance with methodology established by the National Governors Association’s Compact on High School Graduation Data, or that has not made adequate yearly progress for three consecutive years, as defined by the Office of Student Achievement.

(4) “College and career academy” means a specialized charter school established by a partnership which demonstrates a collaboration between business, industry, and community stakeholders to advance workforce development between one or more local boards of education, a private individual, a private organization, or a state or local public entity in cooperation with one or more postsecondary institutions and approved by the State Board of Education in accordance with Article 31 of this chapter or the Georgia Charter Schools Commission in accordance with Article 31A of this chapter.

(5) “Focused program of study” means a rigorous academic core combined with a focus in mathematics and science; a focus in humanities, fine arts, and foreign language; or a coherent sequence of career pathway courses that is aligned with graduation requirements established by the State Board of Education and curriculum requirements established pursuant to Part 2 of this article that prepares a student for postsecondary education or immediate employment after high school graduation.

(6) “Graduation plan” means a student specific plan developed in accordance with subsection (c) of Code Section 20-2-327 detailing the courses necessary for a high school student to graduate from high school and to successfully transition to postsecondary education and the work force.

(7) “Industry certification” means a process of program evaluation that ensures that individual programs meet industry standards in the areas of curriculum, teacher qualification, lab specifications, equipment, and industry involvement.

(8) “Public college or university” means a two-year or four-year college, university, or other institution under the auspices of the Board of Regents of the University System of Georgia.

(9) “Small learning community” means an autonomous or semiautonomous small learning environment within a large high school which is made up of a subset of students and teachers for a two-year, three-year, or four-year period. The goal of a small learning community is to achieve greater personalization of learning with each community led by a principal or instructional leader. A small learning community blends academic studies around a broad career or aca-



demic theme where teachers have common planning time to connect teacher assignments and assessments to college and career readiness standards. Students voluntarily apply for enrollment in a small learning community but must be accepted, and such enrollment must be approved by the student's parent or guardian. A small learning community also includes a college and career academy organized around a specific career theme which integrates academic and career instruction, provides work based learning opportunities, and prepares students for postsecondary education and employment, with support through partnerships with local employers, community organizations, and postsecondary institutions.

(10) "Teacher adviser system" means a system where an individual professional educator in the school assists a small group of students and their parents or guardians throughout the students' high school careers to set postsecondary goals and help them prepare programs of study, utilizing assessments and other data to track academic progress on a regular basis; communicates frequently with parents or guardians; and provides advisement, support, and encouragement as needed.

(11) "Technical school or college" means a school, college, institution, or other branch of the Technical College System of Georgia. (Code 1981, § 20-2-326, enacted by Ga. L. 2010, p. 186, § 1/HB 400; Ga. L. 2011, p. 421, § 2/SB 161; Ga. L. 2011, p. 752, § 20/HB 142; Ga. L. 2012, p. 775, § 20/HB 942.)

**The 2011 amendments.** — The first 2011 amendment, effective May 11, 2011, in paragraph (2), substituted "College and career" for "Career" at the beginning, inserted "which demonstrates a collaboration between business, industry, and community stakeholders to advance workforce development" near the middle, and substituted ", a private individual, a private organization, or a state or local public entity in cooperation with one or more postsecondary institutions" for "and a technical school or college", and deleted the last sentence, which read: "This term also includes a small learning community where a student receives academic instruction at his or her assigned high school combined with work based learning

opportunities at an industry center or technical school or college."; and inserted "college and" in the last sentence of paragraph (9). The second 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, in paragraph (9), substituted "two-year, three-year, or four-year" for "two, three, or four-year" in the first sentence, and revised punctuation in the last sentence.

**The 2012 amendment,** effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, arranged the paragraphs in alphabetical order.

**Editor's notes.** — See the editor's notes at the beginning of repealed Article 6.1 of this chapter for information as to the repeal of the former Code section.

**20-2-327. Recognition of advanced proficiency/honors courses; counseling and development of individual graduation plans.**

(a) Student performance at the advanced proficiency/honors level on any assessments required for purposes of high school graduation shall be recognized as:

(1) Meeting postsecondary entrance test requirements; and

(2) Qualifying students to enroll in credit-bearing postsecondary course work in accordance with policies and requirements established by the State Board of Education, the Board of Regents of the University System of Georgia, and the State Board of the Technical College System of Georgia.

(b) Secondary and postsecondary credit shall be awarded immediately upon successful completion of any articulated or dual enrollment course in accordance with policies and requirements established by the State Board of Education, the Board of Regents of the University System of Georgia, and the State Board of the Technical College System of Georgia.

(c) Beginning with the 2010-2011 school year, students in the sixth, seventh, and eighth grades shall be provided counseling, advisement, career awareness, career interest inventories, and information to assist them in evaluating their academic skills and career interests. Before the end of the second semester of the eighth grade, students shall develop an individual graduation plan in consultation with their parents, guardians, or individuals appointed by the parents or guardians to serve as their designee. High school students shall be provided guidance, advisement, and counseling annually that will enable them to successfully complete their individual graduation plans, preparing them for a seamless transition to postsecondary study, further training, or employment. An individual graduation plan shall:

(1) Include rigorous academic core subjects and focused course work in mathematics and science or in humanities, fine arts, and foreign language or sequenced career pathway course work;

(2) Incorporate provisions of a student's Individualized Education Program (IEP), where applicable;

(3) Align educational and broad career goals and a student's course of study;

(4) Be based on the student's selected academic and career focus area as approved by the student's parent or guardian;

(5) Include experience based, career oriented learning experiences which may include, but not be limited to, internships, apprenticeships, mentoring, co-op education, and service learning;

(6) Include opportunities for postsecondary studies through articulation, dual enrollment, and joint enrollment;

(7) Be flexible to allow change in the course of study but be sufficiently structured to meet graduation requirements and qualify the student for admission to postsecondary education; and

(8) Be approved by the student and the student's parent or guardian with guidance from the student's school counselor or teacher adviser.

An individual graduation plan shall be reviewed annually, and revised, if appropriate, upon approval by the student and the student's parent or guardian with guidance from the student's school counselor or teacher adviser. An individual graduation plan may be changed at any time throughout a student's high school career upon approval by the student and the student's parent or guardian with guidance from the student's school counselor or teacher adviser. (Code 1981, § 20-2-327, enacted by Ga. L. 2010, p. 186, § 1/HB 400; Ga. L. 2011, p. 632, § 3/HB 49; Ga. L. 2011, p. 752, § 20/HB 142.)

**The 2011 amendments.** — The first 2011 amendment, effective July 1, 2011, substituted "State Board of the Technical College System of Georgia" for "State Board of Technical and Adult Education" in subsections (a) and (b). The second 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, revised punctuation at the end of paragraph (a)(1).

**Editor's notes.** — See the editor's notes at the beginning of repealed Article 6.1 of this chapter for information as to the repeal of the former Code section.

**Law reviews.** — For article, "Education: Elementary and Secondary Education," see 28 Ga. St. U. L. Rev. 115 (2011).

## 20-2-328. Competitive grant program.

(a) Subject to appropriations by the General Assembly, the State Board of Education shall establish a competitive grant program for local school systems to implement school reform measures in selected high schools. The state board shall establish program requirements in accordance with the provisions of this Code section and shall establish grant criteria, which shall include that priority for reform grants shall be given to chronically low-performing high schools.

(b)(1) The State Board of Education shall develop an evidence based model program for chronically low-performing high schools receiving a reform grant pursuant to this Code section for addressing at-risk students, which shall include various programs and curricula that have proven to be effective for at-risk students focusing on:

(A) Identification of students at risk for being poorly prepared for the next grade level or for dropping out of school;



(B) Strengthening retention of ninth grade students in school and reducing high failure rates;

(C) Improving more students' performances to grade level standards in reading and mathematics by the end of ninth grade;

(D) Assisting students and their parents or guardians in setting an outcome career and educational goal and identifying a focused program of study to achieve such goal; and

(E) Assisting students in learning and applying study skills, coping skills, and other habits that produce successful students and adults.

(2) The at-risk model program shall include:

(A) Diagnostic assessments to identify strengths and weaknesses in the core academic areas;

(B) A process for identifying at-risk students, closely monitored by the Department of Education in collaboration with local school systems to ensure that students are being properly identified and provided timely, appropriate guidance and assistance and to ensure that no group is disproportionately represented; and

(C) An evaluation component in each high school to ensure the programs are providing students an opportunity to graduate with a high school diploma.

(3) The at-risk model program may include various components designed to result in more students facilitating a successful start in high school and passing ninth grade such as:

(A) Utilizing a flexible schedule that increases students' time in core language arts/reading and mathematics studies designed to eliminate academic deficiencies;

(B) Maintaining a student-teacher ratio in ninth grade that is no higher than any other grade level ratio in high school;

(C) Utilizing experienced and effective teachers as leaders for teacher teams in ninth grade to improve instructional planning, delivery, and reteaching strategies;

(D) Assigning students to a teacher mentor who will meet with them frequently to provide planned lessons on study skills and other habits of success that help students become independent learners and who will help them receive the assistance they need to successfully pass ninth grade; and

(E) Including ninth grade career courses which incorporate a series of miniprojects throughout the school year that require the

application of ninth grade level reading, mathematics, and science skills to complete while students learn to use a range of technology and help students explore a range of educational and career options that will assist them in formulating post high school goals and give them a reason to stay in school and work toward achieving their stated goals.

(c) The State Board of Education shall promulgate rules and regulations for chronically low-performing high schools receiving a reform grant pursuant to this Code section to make the high schools more relevant to and effective for all students. Such rules shall encourage high schools to implement a comprehensive school reform research based model that focuses on:

- (1) Setting high expectations for all students;
- (2) Personalizing graduation plans for students;
- (3) Developing small learning communities or college and career academies with a rigorous academic foundation and emphasis in broad career fields of study;
- (4) Using project based instruction embedded with strong academics to improve relevancy in learning;
- (5) Fostering collaboration among academic and career/technical teachers;
- (6) Implementing nontraditional scheduling in ninth grade for students behind in their grade level;
- (7) Promoting parental involvement; and
- (8) Training teachers to work with low-performing students and their parents or guardians.

(d) This Code section shall be subject to appropriations by the General Assembly. (Code 1981, § 20-2-328, enacted by Ga. L. 2010, p. 186, § 1/HB 400; Ga. L. 2011, p. 421, § 3/SB 161.)

**The 2011 amendment**, effective May 11, 2011, inserted “college and” in paragraph (c)(3).

notes at the beginning of repealed Article 6.1 of this chapter for information as to the repeal of the former Code section.

**Editor’s notes.** — See the editor’s

## **20-2-329. Requirements for high schools that receive a reform grant.**

High schools that receive a reform grant pursuant to Code Section 20-2-328 shall:

- (1) Provide focused programs of study which are designed to provide a well-rounded education for students by fostering artistic

creativity, critical thinking, and self-discipline through the teaching of academic content, knowledge, and skills that students will use in the workplace, further education, and life. The focused programs of study, whether provided at a choice technical high school, a college and career academy, a traditional high school, or on site at a technical school or college or a public college or university, shall be aligned with graduation requirements established by the State Board of Education and curriculum requirements established pursuant to Part 2 of this article, including, at a minimum, four years of mathematics, Algebra I and higher, and four years of English, with an emphasis on developing reading and writing skills to meet college and career readiness standards;

(2) Implement a teacher adviser system;

(3) Provide students in the ninth through twelfth grades information on educational programs offered in high school, in technical and community colleges, in colleges and universities, and through apprenticeship programs and how these programs can lead to a variety of career fields. Local school systems shall provide opportunities for field trips, speakers, educational and career information centers, job shadowing, and classroom centers to assist students and their parents or guardians, with guidance from school counselors and teacher advisers, in revising, if appropriate, the individual graduation plan developed pursuant to subsection (c) of Code Section 20-2-327;

(4) Enroll students no later than ninth grade into one of the following options for earning a high school diploma and preparing students for postsecondary education and a career which will include a structured program of academic study with in-depth studies in:

(A) Mathematics and science;

(B) Humanities, fine arts, and foreign language; or

(C) A career pathway that leads to passing an employer certification exam in a high demand, high skill, or high wage career field or to an associate's degree or bachelor's degree.

The awarding of a special education diploma to any disabled student who has not completed all of the requirements for a high school diploma, but who has completed his or her Individualized Education Program (IEP) shall be deemed to meet the requirements of this paragraph;

(5) Implement the at-risk model program developed by the State Board of Education pursuant to subsection (b) of Code Section 20-2-328;



(6) Comply with the rules and regulations promulgated by the State Board of Education for chronically low-performing high schools pursuant to subsection (c) of Code Section 20-2-328; and

(7) Schedule annual conferences to assist students and their parents or guardians in setting educational and career goals and creating individual graduation plans beginning with students in the eighth grade and continuing through high school. These conferences shall include, but are not limited to, assisting the student in identifying educational and career interests and goals, selecting a career and academic focus area, and developing an individual graduation plan. (Code 1981, § 20-2-329, enacted by Ga. L. 2010, p. 186, § 1/HB 400; Ga. L. 2011, p. 421, § 4/SB 161.)

**The 2011 amendment**, effective May 11, 2011, inserted “college and” near the beginning of the last sentence of paragraph (1).

**Editor’s notes.** — See the editor’s notes at the beginning of repealed Article 6.1 of this chapter for information as to the repeal of the former Code section.

### **20-2-329.1. Rules and regulations.**

The State Board of Education shall promulgate rules and regulations necessary to carry out the provisions of this part. (Code 1981, § 20-2-329.1, enacted by Ga. L. 2010, p. 186, § 1/HB 400.)

**Editor’s notes.** — See the editor’s notes at the beginning of repealed Article 6.1 of this chapter for information as to the repeal of the former Code section.

## **PART 17**

### **STATE EDUCATION FINANCE STUDY COMMISSION**

**Effective date.** — This part became effective May 13, 2011.

### **20-2-329.2. (Repealed effective March 31, 2013) Legislative findings; comprehensive study of the method of funding schools in Georgia.**

The General Assembly passed the Quality Basic Education Act (QBE) in 1985 by unanimous vote. The legislation was the culmination of two years of work by the Education Review Commission, a body made up of business leaders, parents, teachers, education experts, and other community leaders, which was charged with developing a comprehensive educational reform package for Georgia. The QBE Formula, along with several other formula related components, has served as the method of calculating the funding needs of Georgia school systems for the past 25 years. The General Assembly has now determined that it is in the best interests of the state and its citizenry to undertake a comprehensive

study of the method of funding schools in Georgia. (Code 1981, § 20-2-329.2, enacted by Ga. L. 2011, p. 647, § 1/HB 192.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2011, Code Section 20-2-330, as enacted by Ga. L. 2011, p. 647, § 1, was redesignated as Code Section 20-2-329.2. formerly pertained to the Georgia Education Leadership Academy. The former Code section was based on Ga. L. 1985, p. 1657, § 3 and was repealed by Ga. L. 1985, p. 1657, § 4, effective July 1 1986.

**Editor’s notes.** — This Code section

**20-2-329.3. (Repealed effective March 31, 2013) Establishment of the State Education Finance Study Commission; purpose; composition.**

(a) The State Education Finance Study Commission is hereby created to evaluate the Quality Basic Education Formula and any other program or matter relative to education funding in Georgia as provided in this part. Members of the commission should have good working knowledge of education and education finance. Members must be willing to commit time to actively participate in full committee meetings and subcommittee meetings and must agree to balance the educational needs of children and the resources provided by the citizens of Georgia. The commission shall be composed of 20 members as follows:

- (1) The following members, appointed by the Governor:
  - (A) A local school superintendent;
  - (B) A principal or other administrator;
  - (C) A teacher;
  - (D) A member of a local board of education;
  - (E) A member of the State Board of Education;
  - (F) A representative from the System Office of the University System of Georgia;
  - (G) A representative from the Technical College System of Georgia;
  - (H) A representative from the Professional Standards Commission;
  - (I) A school finance officer; and
  - (J) One representative from the business community;
- (2) The State School Superintendent;
- (3) The chief financial officer of the Department of Education;

(4) Four members of the House of Representatives, appointed by the Speaker of the House of Representatives, including the chairperson of the House Committee on Education; and

(5) Four members of the Senate, appointed by the Lieutenant Governor, including the chairperson of the Senate Education and Youth Committee.

(b) The chairpersons of the House Committee on Education and the Senate Education and Youth Committee shall serve as cochairpersons of the commission. The commission may elect other officers as deemed necessary. The cochairpersons may designate and appoint subcommittees from among the membership of the commission as well as appoint other persons to perform such functions as they may determine to be necessary as relevant to and consistent with this part. The cochairpersons shall only vote to break a tie.

(c) The commission may engage additional ad hoc nonvoting members as needed to address certain issues in subcommittee. This may include, but not be limited to, input from various personnel experienced in the Quality Basic Education Formula, such as counselors, pre-K personnel, special education teachers, social workers, psychologists, art teachers, music teachers, physical education teachers, foreign language teachers, agriculture and career-technical education teachers, media specialists, school nutrition managers, and transportation managers.

(d) The cochairpersons shall be authorized to appoint a steering committee composed of members of the commission to monitor the progress of the commission, to ensure timelines are being met, and to mediate differences that might arise in the course of the study. (Code 1981, § 20-2-329.3, enacted by Ga. L. 2011, p. 647, § 1/HB 192.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2011, Code Section 20-2-331, as enacted by Ga. L. 2011, p. 647, § 1, was redesignated as Code Section 20-2-329.3.

#### **20-2-329.4. (Repealed effective March 31, 2013) Meetings; compensation.**

(a) The commission shall hold meetings at the call of the cochairpersons. The commission shall meet at least quarterly and subcommittees shall meet as often as needed to complete tasks.

(b) A quorum for transacting business shall be a majority of the members of the commission.

(c) Any legislative members of the commission shall receive the allowances provided for in Code Section 28-1-8. Citizen members shall receive a daily expense allowance in the amount specified in subsection (b) of Code Section 45-7-21 as well as the mileage or transportation



allowance authorized for state employees. Any members of the commission who are state officials, other than legislative members, and state employees shall receive no compensation for their services on the commission, but they shall be reimbursed for expenses incurred by them in the performance of their duties as members of the commission in the same manner as they are reimbursed for expenses in their capacities as state officials or employees. The funds necessary for the reimbursement of the expenses of state officials, other than legislative members, and state employees shall come from funds appropriated to or otherwise available to their respective departments. All other funds necessary to carry out the provisions of this part shall come from funds appropriated to the House of Representatives and the Senate. (Code 1981, § 20-2-329.4, enacted by Ga. L. 2011, p. 647, § 1/ HB 192.)

**Code Commission notes.**— Pursuant to Code Section 28-9-5, in 2011, Code Section 20-2-332, as enacted by Ga. L. 2011, p. 647, § 1, was redesignated as Code Section 20-2-329.4.

**20-2-329.5. (Repealed effective March 31, 2013) Duties and powers; evaluation of cost and needed resources for study of the QBE formula.**

(a) The commission shall study and evaluate the cost and resources needed to educate a child through review of the following core issues relating to education financing;

**(1) QBE Formula:**

(A) Evaluate the various components of the formula, including teacher salaries, maintenance and operations, and textbooks, and determine whether there needs to be adjustments;

(B) Consider whether new components should be added to the formula, such as technology;

(C) Consider whether other programs that have been proven successful should be added to the formula, such as graduation coaches; and

(D) Review other areas within the QBE Act that relate to or impact school funding, such as maximum class sizes and expenditure controls, and whether local school systems should continue to be given flexibility in these areas;

**(2) State and local funding partnership:** Examine the requirement that school systems must levy 5 mills in order to draw down state QBE funding and whether the current method should continue or whether school systems should be required to pay a certain percentage of the formula or for certain expenditures;

(3) **Equalization:** Examine the equalization grant to determine if the purpose of the grant is being met and whether revisions are needed;

(4) **Student transportation:**

(A) Review the current formula for student transportation; and

(B) Review other safety issues related to student transportation, such as funding bus monitors and seat belts;

(5) **State schools funding:** Examine funding for the three schools for blind and deaf children operated by the state to identify needed changes in the funding method, whether additional funding for residential, medical, and other costs unique to the schools should be provided, and whether local school systems should be contributing to the cost of educating these children; and

(6) **Capital outlay:**

(A) Review the capital outlay programs for which school systems may be eligible to ensure that each program is effective and adequately funded; and

(B) Because the program is currently scheduled to sunset on June 30, 2015, recommend whether and how long the program should be extended.

(b) The commission is encouraged, if time permits, to study and evaluate the following issues relating to education financing:

(1) **Charter schools:**

(A) Review Georgia's charter laws and determine what changes may need to be made to streamline the chartering process and provide fair funding for the various types of charter schools; and

(B) Examine the issue of funding for operations and facilities;

(2) **Career, Technical, and Agriculture Education, dual enrollment, virtual schools:**

(A) Review the various funding mechanisms for each of these nontraditional programs; and

(B) Consider the costs of administering these types of programs and the appropriate funding mechanism;

(3) **Teacher pay:**

(A) Review the issue of whether performance pay should be implemented;

(B) Determine how such a program could be sustained long-term; and

(C) Review the requirements of the federal Race to the Top initiative and how the state may be required to implement performance pay;

(4) **Non-QBE grants:**

(A) Review other grant programs available to school systems, including but not limited to school nutrition, sparsity grants, migrant education, preschool disabled, the severely and emotionally disturbed program, and school nurses; and

(B) Make recommendations on funding updates that are needed; and

(5) **Other Title 20 revisions:** Review all key statutes and provisions of this title to ensure laws are updated and whether any laws which represent an unfunded mandate should be eliminated.

(c) The commission shall have the following powers:

(1) To request and receive data from and review the records of appropriate agencies and entities to the greatest extent allowed by state and federal law;

(2) To accept public or private grants, devises, and bequests;

(3) To enter into all contracts or agreements necessary or incidental to the performance of its duties; and

(4) To conduct studies, collect data, or take any other action the commission deems necessary to fulfill its responsibilities.

(d) The commission shall be authorized to retain the services of auditors, attorneys, financial consultants, education experts, economists, and other individuals or firms as determined appropriate by the commission. (Code 1981, § 20-2-329.5, enacted by Ga. L. 2011, p. 647, § 1/HB 192.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2011, Code Section 20-2-333, as enacted by Ga. L. 2011, p. 647, § 1, was redesignated as Code Section 20-2-329.5.

Pursuant to Code Section 28-9-5, in 2011, a colon was substituted for a semi-colon at the end of the introductory language of subsection (b).

**20-2-329.6. (Repealed effective March 31, 2013) Support staff; assistance and input from agencies and organizations.**

(a) Staff support for the commission shall be provided by the Department of Education, the Governor’s office, the Office of Planning and Budget, the House of Representatives, the Senate, and the Office of



Legislative Counsel. The cochairpersons of the commission shall designate an individual to serve as staff director for the commission.

(b) The commission may request assistance and input from agencies and organizations as needed, including the University System of Georgia, the Technical College System of Georgia, the Professional Standards Commission, the Georgia Student Finance Commission, the Department of Early Care and Learning, the Office of Student Achievement, the Georgia Partnership for Excellence in Education, the Georgia School Superintendents Association, the Georgia School Boards Association, the Georgia Association of Educational Leaders, the Georgia Association of Educators, the Professional Association of Georgia Educators, the Southern Regional Education Board, the Georgia Charter Schools Association, private corporations, and other organizations willing to participate. (Code 1981, § 20-2-329.6, enacted by Ga. L. 2011, p. 647, § 1/HB 192.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2011, Code Section 20-2-333.1, as enacted by Ga. L. 2011, p. 647, § 1, was redesignated as Code Section 20-2-329.6.

**20-2-329.7. (Repealed effective March 31, 2013) Timetable; recommendations.**

(a) The commission shall perform its work in accordance with the following:

- (1) No later than May 15, 2011: Commission members appointed;
- (2) No later than June 30, 2011: First commission meeting conducted;
- (3) September 30, 2011: Interim recommendations completed;
- (4) December 31, 2011: Proposed legislation for interim recommendations completed;
- (5) September 30, 2012: Final recommendations completed; and
- (6) December 31, 2012: Proposed legislation for final recommendations completed.

(b) Such recommendations and proposed legislation shall be submitted by the commission in accordance with the schedule in subsection (a) of this Code section to the Governor and the General Assembly; provided, however, that the commission may modify these dates if necessary.

(c) The final recommendations shall include a prioritization of all recommendations, including those that do and do not require additional funding. Such final recommendations shall include a proposed timeline

for implementation of recommendations, an estimated cost of each recommendation, and the target year for including in the state budget. (Code 1981, § 20-2-329.7, enacted by Ga. L. 2011, p. 647, § 1/HB 192.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2011, Code Section 20-2-333.2, as enacted by Ga. L. 2011, p. 647, § 1, was redesignated as Code Section 20-2-329.7.

### **20-2-329.8. (Repealed effective March 31, 2013) Repeal of part.**

The commission shall stand abolished and this part shall be repealed on March 31, 2013. (Code 1981, § 20-2-329.8, enacted by Ga. L. 2011, p. 647, § 1/HB 192.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2011, Code Section 20-2-333.3, as enacted by Ga. L. 2011, p. 647, § 1, was redesignated as Code Section 20-2-329.8.

## ARTICLE 6.1

### IMPLEMENTATION OF EDUCATIONAL PROGRAMS

Repealed by Ga. L. 1985, p. 1657, § 4, effective July 1, 1986.

**Editor's notes.** — This article, effective July 1, 1985, which consisted of former Code Sections 20-2-320 through 20-2-329, 20-2-329.1, and 20-2-329.2, was based on Ga. L. 1985, p. 1657, § 3.

## ARTICLE 7

### ADDITIONAL STATE AID

**Editor's notes.** — The part designation for Part 1 of this article, which consisted of reserved Code Sections 20-2-330 through 20-2-333 and Code Section 20-2-334, and the entireties of Parts 2 and 3 of this article, which consisted of Code Sections 20-2-350 through 20-2-356 and Code Sections 20-2-360 through 20-2-362, respectively, were repealed by Ga. L. 2000, p. 618, §§ 59-61, effective July 1, 2000.

### **20-2-330 through 20-2-333.**

Reserved. Repealed by Ga. L. 1989, p. 808, § 1, effective July 1, 1989.

**Editor's notes.** — The part designation for Part 1 of this article, which consisted of reserved Code Sections 20-2-330 through 20-2-333 and Code Section 20-2-334, was repealed by Ga. L. 2000, p. 618, § 59, effective July 1, 2000. Code Sections 20-2-330 through 20-2-333, pertaining to legislative grants for local tax relief, were based on Ga. L. 1979, p. 1001, §§ 1-3; Ga. L. 1980, p. 1789, § 1.

**20-2-334. Computation of effect of grants to be shown on tax bill.**

(a) A computation shall be shown on each tax bill for school ad valorem taxes which represents the local school system's share of funds in the "General Appropriations Act" for ad valorem tax relief. The provisions of this Code section shall not apply to tax bills for motor vehicles and trailers.

(b) The computation provided for in subsection (a) of this Code section shall show the following:

(1) The mill rate which the local school system would have been required to levy to fund a budget equal in amount to the actual budget of the system, including the system's share of funds identified for this purpose in the "General Appropriations Act," if no funds were actually received by the system pursuant to such appropriation for that year. This mill rate shall be labeled "Annual Equivalent Mill Rate";

(2) As a subtraction from the mill rate determined pursuant to paragraph (1) of this subsection, a mill rate which, if applied against the tangible property in the local school system, would produce tax revenue equal to the amount of the funds received in that year by the school system pursuant to the appropriation for that year. This mill rate shall be labeled "State School Tax Credit"; and

(3) As the remainder of the subtraction provided for in paragraph (2) of this subsection, the mill rate which is actually being levied against the taxpayer's property. This mill rate shall be labeled "Actual School Tax Mill Rate."

(c) It is the purpose of this Code section to provide in a demonstrable fashion to each ad valorem taxpayer of that tangible property provided for in subsection (a) of this Code section information which will enable the taxpayer to ascertain readily the amount of additional state funds which are being made available to that local school system in which the taxpayer's property is being taxed. Additionally, each such taxpayer by this Code section will be in the position to be informed as to what purposes the officials in charge of the local school system and its finances have devoted the use of such funds. If a local school system has received funds which have been made available by the General Assembly pursuant to the "General Appropriations Act" but has not reduced local property taxes levied in behalf of the school system, each taxpayer will be so informed. However, if the receipt of additional state funds has enabled the local school system to reduce local property taxes by a corresponding sum to that received pursuant to the "General Appropriations Act," or any fraction thereof, the taxpayer will be so advised. (Ga. L. 1979, p. 1001, § 4; Ga. L. 1989, p. 808, § 2; Ga. L. 2000, p. 618, § 59.)



**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and

may be cited as the 'A Plus Education Reform Act of 2000.'"

## JUDICIAL DECISIONS

**Use of tax rebate funds unrestricted.** — Although the Tax Rebate Act, O.C.G.A. § 20-2-330 et seq., seeks to encourage tax relief, the Act does not require that any tax relief be afforded and the Act

does not restrict the manner in which a local school system may apply the tax rebate funds in furtherance of educational purposes. *Cowen v. Snellgrove*, 169 Ga. App. 271, 312 S.E.2d 623 (1983).

## OPINIONS OF THE ATTORNEY GENERAL

**Computation requirement inapplicable without appropriation "for ad valorem relief."** — The requirement for a computation does not apply unless there is an appropriation "for ad valorem tax relief ... identified for this purpose in the 'General Appropriations Act'". Since there

was no appropriation identified for ad valorem tax relief in the General Appropriations Act for Fiscal Year 1991-1992, the provisions of O.C.G.A. § 20-2-334 did not apply to it. 1991 Op. Att'y Gen. U91-13.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 56 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 799 et seq.

### 20-2-350 through 20-2-356.

Repealed by Ga. L. 2000, p. 618, § 60, effective July 1, 2000.

**Editor's notes.** — Part 2 of this article, which consisted of Code Sections 20-2-350 through 20-2-356, was repealed by Ga. L. 2000, p. 618, § 60, effective July 1, 2000.

This part, pertaining to school districts where parents live or work on state prop-

erty, was based on Ga. L. 1962, p. 71, § 1, Ga. L. 1962, p. 71, § 2, Ga. L. 1962, p. 71, § 3, Ga. L. 1962, p. 71, § 4, Ga. L. 1962, p. 71, § 5, Ga. L. 1962, p. 71, § 7, Ga. L. 1962, p. 71, § 6.

### 20-2-360 through 20-2-362.

Repealed by Ga. L. 2000, p. 618, § 61, effective July 1, 2000.

**Editor's notes.** — Part 3 of this article, which consisted of Code Sections 20-2-360 through 20-2-362, was repealed by Ga. L. 2000, p. 618, § 61, effective July 1, 2000.

This part, pertaining to grants to compensate for loss of tax revenue from finan-

cial institutions, was based on Code 1981, § 20-2-360, enacted by Ga. L. 1983, p. 823, § 1; Code 1981, § 20-2-361, enacted by Ga. L. 1983, p. 823, § 1; Ga. L. 1992, p. 6, § 20; Code 1981, § 20-2-362, enacted by Ga. L. 1983, p. 823, § 1.

## ARTICLE 8

## CONSOLIDATION OF INDEPENDENT AND COUNTY SCHOOL SYSTEMS

**Cross references.** — Consolidation of school systems, Ga. Const. 1983, Art. VIII, Sec. V, Para. I.

## JUDICIAL DECISIONS

**Cited** in *Searcy v. State*, 91 Ga. App. 603, 86 S.E.2d 652 (1955).

## OPINIONS OF THE ATTORNEY GENERAL

**Title to real property** held by independent school system passes by operation of law to county school system upon merger of two systems. 1982 Op. Att'y Gen. No. U82-21.

**20-2-370. Referendum on repeal of special school law and consolidation of systems.**

Whenever the citizens of a municipality or independent school district authorized by law to establish and maintain a system of schools by local taxation in whole or in part are operating a system of public schools independent of the county school system and wish to annul their special school law and become a part of the county school system, they shall present and file with the governing authority of the city a petition signed by one-fourth of the qualified voters of their territory; and the governing authority shall then submit the question at an election to be held in accordance with Chapter 2 of Title 21. A majority of those voting shall be necessary to carry the election. Only qualified voters residing within the municipality or district for six months prior to the election shall vote. An election shall not be held for the same purpose more often than every 12 months. (Ga. L. 1926, Ex. Sess., p. 40, § 1; Code 1933, § 32-1201; Ga. L. 1982, p. 3, § 20, Ga. L. 1998, p. 295, § 3.)

**Law reviews.** — For survey article on local government law, see 34 Mercer L. Rev. 225 (1982).

## JUDICIAL DECISIONS

**Constitutionality of abolition of local school districts.** — Abolition of local school districts by repeal of the districts' corporate charters does not violate the uniformity requirement of Ga. Const. 1976, Art. I, Sec. II, Para. VII (see Ga. Const. 1983, Art. III, Sec. VI, Para. IV). *Upson County Sch. Dist. v. City of Thomaston*, 248 Ga. 98, 281 S.E.2d 537 (1981).

**If systems consolidate, city school property title vested in county board.**

— If, by election, an independent city school system is consolidated with the county school system, the election has the effect of vesting title to city school property in county board of education and no deed is, as a matter of law, necessary. *Bailey v. County Bd. of Educ.*, 213 Ga. 308, 99 S.E.2d 124 (1957).

**Municipality without power to donate other funds for school's support.**

— After a municipality has transferred a school to the county board of education, the municipality has no legal power to donate other funds for the support of the

school. *Miller v. City of Cornelia*, 188 Ga. 674, 4 S.E.2d 568 (1939).

**Section applies to abolition of school system, not city itself.** — O.C.G.A. § 20-2-370 was intended to apply where citizens of municipality wish to abolish their city school system and become part of county school system, without abolishing the city. It was not intended to be a prerequisite to abolition of the city itself. *Upson County Sch. Dist. v. City of Thomaston*, 248 Ga. 98, 281 S.E.2d 537 (1981).

**Cited in** *McCullers v. Williamson*, 221 Ga. 358, 144 S.E.2d 911 (1965).

## OPINIONS OF THE ATTORNEY GENERAL

**Section was not superseded or repealed by the 1945 Constitution.** 1952-53 Op. Att'y Gen. p. 67 (see O.C.G.A. § 20-2-370).

**Systems cannot merge except by constitutional amendment or statutory procedure.** — No existing county school system can legally merge with an independent school system except by constitutional amendment or by following the present statutory procedure as provided by this article. 1952-53 Op. Att'y Gen. p. 335.

No existing county board of education and independent school system can merge except either by following the present statutory procedure, as set forth in this article, or through the adoption of a constitutional amendment changing the existing systems. 1960-61 Op. Att'y Gen. p. 143.

**Final decision in determining merger question.** — While former Code 1933, § 32-403 clearly gave the State Board of Education general supervision over the common schools of this state and contains no inhibitions against the board making suggestions or recommendations as to the advisability of merging indepen-

dent school districts with county school systems, nevertheless, the final decision in determining the question of merger is vested exclusively in the qualified voters residing within the municipality or district as provided for in former Code 1933, § 32-1201. 1948-49 Op. Att'y Gen. p. 513.

**County, not state, board arranges for operation of merged local system.** — Former Code 1933, §§ 32-1201 and 32-1202 set forth the procedure for the merger of an independent school system with the county school system and provide that the county board of education shall arrange for the operation of the local system as a part of the county public school system; this is a function of the county board of education and not the State Board of Education. 1948-49 Op. Att'y Gen. p. 513.

**Former homestead exemptions not subject to county tax.** — When an independent school system of a city was merged with the county school system, the homestead exemptions granted under Ga. L. 1946, p. 12 to the residents of the city were not subject to the tax levied by the county for school purposes. 1958-59 Op. Att'y Gen. p. 348.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 17, 39.

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 87, 88.



## 20-2-371. Proceedings when vote favors repeal and consolidation.

When the results of an election held under Code Section 20-2-370 are declared and published in favor of repealing such independent school system, making the territory included in the system thereby to become a part of the county school system, such independent or local school system shall continue to function under its local laws, organizations, and regulations until the county board of education shall arrange for the operation by them of such school or schools within the local system as a part of their public school system. (Ga. L. 1926, Ex. Sess., p. 40, § 2; Code 1933, § 32-1202.)

### JUDICIAL DECISIONS

**City school property title vested in county board.** — If, by election, an independent city school system is consolidated with the county school system, the election has the effect of vesting title to city school property in county board of education and no deed is, as a matter of law, necessary. *Bailey v. County Bd. of Educ.*, 213 Ga. 308, 99 S.E.2d 124 (1957).

**Municipality without power to do-**

**nate other funds for school's support.** — After a municipality has transferred a school to the county board of education, it has no legal power to donate other funds for the support of the school. *Miller v. City of Cornelia*, 188 Ga. 674, 4 S.E.2d 568 (1939).

**Cited in** *McCullers v. Williamson*, 221 Ga. 358, 144 S.E.2d 911 (1965).

### OPINIONS OF THE ATTORNEY GENERAL

**Systems cannot merge except by constitutional amendment or statutory procedure.** — No existing county school system can legally merge with an independent school system except by constitutional amendment or by following the present statutory procedure. 1952-53 Op. Att'y Gen. p. 335.

No existing county board of education and independent school system can merge except either by following the present statutory procedure, or through the adoption of a constitutional amendment changing the existing systems. 1960-61 Op. Att'y Gen. p. 143.

**County, not state, board arranges for operation of merged local system.** — Former Code 1933, §§ 32-1201 and 32-1202 set forth the procedure for the

merger of an independent school system with the county school system and provide that the county board of education shall arrange for the operation of the local system as a part of the county public school system; this is a function of the county board of education and not the State Board of Education. 1948-49 Op. Att'y Gen. p. 513.

**Former homestead exemptions not subject to county tax.** — When an independent school system of a city was merged with the county school system, the homestead exemptions granted under Ga. L. 1946, p. 12 to the residents of the city were not subject to the tax levied by the county for school purposes. 1958-59 Op. Att'y Gen. p. 348.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 36, 40, 48.

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 87, 89.

**20-2-372. Effect of repeal and consolidation.**

Where any local or independent system is repealed by and in the manner provided in Code Sections 20-2-370 and 20-2-371, the territory formerly included in such independent system shall become and constitute a school district of the county in which it is located and shall enjoy the same privileges and shall be governed by the same laws as other school districts in the county, including the authority to levy local taxes for school purposes; provided, however, that the rate for such taxation shall not exceed the rate allowed by law to other similar school districts. (Ga. L. 1926, Ex. Sess., p. 40, § 3; Code 1933, § 32-1203.)

**JUDICIAL DECISIONS**

**City school property title vested in county board.** — If, by election, an independent city school system is consolidated with the county school system, the election has the effect of vesting title to city school property in the county board of education and no deed is, as a matter of law, necessary. *Bailey v. County Bd. of Educ.*, 213 Ga. 308, 99 S.E.2d 124 (1957).

**Municipality without power to do-**

**nate other funds for school's support.**

— After a municipality has transferred a school to the county board of education, it has no legal power to donate other funds for the support of the school. *Miller v. City of Cornelia*, 188 Ga. 674, 4 S.E.2d 568 (1939).

**Cited in** *McCullers v. Williamson*, 221 Ga. 358, 144 S.E.2d 911 (1965).

**OPINIONS OF THE ATTORNEY GENERAL**

**Systems cannot merge except by constitutional amendment or statutory procedure.** — No existing county school system can legally merge with an independent school system except by constitutional amendment or by following the present statutory procedure. 1952-53 Op. Att'y Gen. p. 335.

No existing county board of education and independent school system can merge except either by following the present statutory procedure or through the adop-

tion of a constitutional amendment changing the existing systems. 1960-61 Op. Att'y Gen. p. 143.

**When merged, former homestead exemptions not subject to county tax.**

— When an independent school system of a city was merged with the county school system, the homestead exemptions granted under Ga. L. 1946, p. 12 to the residents of the city were not subject to the tax levied by the county for school purposes. 1958-59 Op. Att'y Gen. p. 348.

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 36, 40, 48.

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 87, 89, 90.

**20-2-373. Applicability of article.**

Nothing contained in this article shall apply to a municipal or independent school system of a municipality having a population of 200,000 or more according to the United States decennial census of

1920 or any future such census. (Ga. L. 1927, p. 160, § 1; Code 1981, § 20-2-373, enacted by Ga. L. 1982, p. 2107, § 19.)

**Editor's notes.** — Ga. L. 1927, p. 160, § 1 was not codified in the 1933 Code or in the Official Code of Georgia Annotated. However, because of the similarity of subject matter between that Act and the 1982 Act which enacted this Code section, the 1927 Act has been added to the historical citation for this Code section.

## ARTICLE 9

### LOCAL PUBLIC SCHOOL FINANCES

**Cross references.** — Local taxation for education, Ga. Const. 1983, Art. VIII, Sec. VI.

#### PART 1

#### BORROWING FOR OPERATING EXPENSES

### 20-2-390. Power of county boards.

The county boards of education of the several counties of this state shall have the power and authority, whenever they deem it necessary, to borrow sufficient amounts of money, and no more, to pay for the operation of the public schools of their counties, provided that no county board shall have authority under this part to borrow a sum of money greater in the aggregate than the sum which the county board may be entitled to receive from the state appropriation and from taxes levied for educational purposes during the year in which such loan is made. (Ga. L. 1919, p. 288, § 95; Code 1933, § 32-921; Ga. L. 1937, p. 880, § 1.)

### JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the issues covered in the statutory provisions, decisions under former Code 1910, § 1551(102) and former Code 1933, § 32-1132, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Right and power to operate county schools.** — Right and power of the county boards of education and the county superintendents of education to operate the schools of the counties and to make contracts of employment with teachers is settled by the Constitution and laws of this

state as construed by the Supreme Court. *Jones v. Ellis*, 182 Ga. 380, 185 S.E. 510 (1936) (decided under former Code 1933, § 32-1132).

**County officers empowered to sell state warrants and collect money.** — When warrants are issued and delivered to the county superintendent, the county officers have express power to sell and assign the warrants and collect the money arising from the sale. Having such power, it is competent in making the sale to create a bailment of the money. *Berrien v. State*, 156 Ga. 380, 119 S.E. 300 (1923) (decided under former Code 1910, § 1551(102)).



**State cannot exercise control over warrant or proceeds after delivery.** — State, after the delivery of a warrant to the county superintendent, cannot legally exercise any control over the warrant or the proceeds arising from discount. *Berrien v. State*, 158 Ga. 380, 119 S.E. 300 (1923) (decided under former Code 1910, § 1551(102)).

**Prerequisite condition to right to borrow money.** — Neither the record on the minutes of the board of the board's resolution to borrow money, nor the signing of the minutes by the president (now the chair), is a mandatory or prerequisite condition to the right to borrow money and execute notes for school purposes. *American Sur. Co. v. Citizens' Bank*, 48 Ga. App. 448, 172 S.E. 801 (1934), *aff'd*, 180 Ga. 827, 180 S.E. 635 (1935) (decided under former Code 1910, § 1551(102)).

**In action for money borrowed, demand for payment not condition precedent.** — In an action against a local school district for money borrowed, there is no condition precedent that a demand for payment be made and the statute of limitation begins to run from the time funds are on hand to discharge obligations. *Jasper Sch. Dist. v. Gormley*, 57 Ga. App. 537, 196 S.E. 232 (1938) (decided under former Code 1933, § 32-1132).

**When payment of indebtedness not provided for in estimated budget.** —

When payment of the indebtedness due to the petitioner by county board of education was not provided for as an estimated expenditure from the funds included in the budget filed by the county board with the State Board of Education, the petitioner was not legally entitled to compel payment out of the funds included in the budget, and equity would not impound the funds for the purpose of compelling payment. *Lewis v. Board of Educ.*, 183 Ga. 687, 189 S.E. 233 (1936) (decided under former Code 1933, § 32-1132).

**Judgment and pay back salary award.** — Even though the majority of funds controlled by a school board emanates from the state, the board has sufficient sources of income to satisfy a judgment, or the ability to raise the funds, as well as the authority to pay an award of back salary without transgressing state law. *Davis v. Griffin-Spalding County Bd. of Educ.*, 445 F. Supp. 1048 (N.D. Ga. 1975).

**Cited in** *Hicks v. Groves*, 177 Ga. 574, 170 S.E. 877 (1933); *Nelms v. Stephens County Sch. Dist.*, 201 Ga. 274, 39 S.E.2d 651 (1946).

## OPINIONS OF THE ATTORNEY GENERAL

**Section is controlled by Ga. Const. 1976, Art. IX, Sec. VII, Para. IV** (see now Ga. Const. 1983, Art. IX, Sec. V, Para. V) restricting the amount of debt which may be incurred by a county board of education. 1958-59 Op. Att'y Gen. p. 97.

**Restriction on temporary loans cannot include anticipated state revenues.** — Provision in Ga. Const. 1976, Art. IX, Sec. VII, Para. IV (see now Ga. Const. 1983, Art. IX, Sec. V, Para. V) that the aggregate amount of all temporary loans of a county board of education outstanding at any one time shall not exceed 75 percent of the total gross income of the county board of education from taxes collected by the county, means "local county taxes"; it cannot include anticipated revenues from the State Board of Education,

which money is merely a grant from the state. 1958-59 Op. Att'y Gen. p. 97.

**Unconstitutional not to discharge school obligations within year incurred.** — Neither Board of Educ. v. *Thurmond*, 162 Ga. 58, 132 S.E. 427 (1926), nor Board of Educ. v. Board of Trustees of Fort Valley Consol. School Dist., 170 Ga. 509, 153 S.E. 214 (1930), can properly be construed as upholding the constitutionality of school obligations not to be discharged within the year in which the obligations are incurred. 1969 Op. Att'y Gen. No. 69-160.

**County permitted to borrow for all necessary purposes.** — This section clearly expresses a legislative intent to permit the county boards to borrow for all purposes necessary for the operation of

the public schools. 1948-49 Op. Att'y Gen. p. 108 (see O.C.G.A. § 20-2-390).

**Right of county board to pledge state appropriations** for an advance loan is impliedly recognized by law. 1948-49 Op. Att'y Gen. p. 105; 1948-49 Op. Att'y Gen. p. 106.

**Board may mortgage school buses to retire county school debts.** — Inasmuch as the county boards of education are vested with the title and control of all school property and have been granted the power to borrow money, these plenary grants of authority are sufficient to authorize the board to use the school property

as the board may see fit and, therefore, a county board of education may mortgage school buses to retire debts of the county school system. 1948-49 Op. Att'y Gen. p. 104.

**Board not authorized to sell recently erected building and buy back same building.** — County board of education would not be authorized to sell a recently erected school building and at the same time buy back the same building, to be paid for over a period of years, to obtain funds with which to equip the building and other buildings in the school system. 1952-53 Op. Att'y Gen. p. 72.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, §§ 230 et seq., 258.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 707 et seq.

**ALR.** — Right of person advancing money for public school purposes to be reimbursed, 50 ALR 1291.

### 20-2-391. Loan resolution.

In order for any county board of education to borrow money for the purposes stated in Code Section 20-2-390, there shall be passed by the county board a resolution authorizing the money to be borrowed, in which resolution shall be stated the amount of money to be borrowed, the length of time it is to be used, the rate of interest to be paid, for what purpose borrowed, and from whom it is to be borrowed, which resolution shall be recorded on the minutes of the meetings of the county board by the county school superintendent. (Ga. L. 1919, p. 288, § 96; Code 1933, § 32-922.)

### JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, a decision under former Code 1933, § 32-1133, which was subsequently repealed but was succeeded by provisions in this Code section, is included in the annotations for this Code section.

**Without legal resolution, renewals of notes without binding force.** — If the local school district was without authority to execute notes in the first instance, being without a resolution conforming to the requirements of the law,

the renewals thereof were necessarily without binding force and there was no obligation on its part to make known any intention not to pay. *Jasper Sch. Dist. v. Gormley*, 57 Ga. App. 537, 196 S.E. 232 (1938) (decided under former Code 1933, § 32-1133).

**Cited in** *Citizens' Bank v. American Sur. Co.*, 174 Ga. 852, 164 S.E. 817 (1932); *Hicks v. Groves*, 177 Ga. 574, 170 S.E. 877 (1933); *Nelms v. Stephens County Sch. Dist.*, 201 Ga. 274, 39 S.E.2d 651 (1946).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 79.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 707 et seq.

**ALR.** — Right of person advancing money for public school purposes to be reimbursed, 50 ALR 1291.

## 20-2-392. Duration of loan; repayment.

No money shall be borrowed for any longer time than is necessary, and it shall be paid back out of any funds of the county school superintendent that can be legally applied to the payment of the loan. (Ga. L. 1919, p. 288, § 97; Code 1933, § 32-923.)

## JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, a decision under former Code 1910, § 1551(104), which was subsequently repealed but was succeeded by provisions in this Code section, is included in the annotations for this Code section.

**Board empowered to repay debts from funds derived from tax levy.** — Board of education, having lawfully incurred debts for money loaned to pay teachers and operate the public schools of

the county, and the debts having accumulated from year to year, it was in the power of the board to repay the debts from any funds that could lawfully be applied to such a purpose, including funds derived from the levy of a local tax in the fall of the school year in which the debts are paid. Board of Educ. v. Thurmond, 162 Ga. 58, 132 S.E. 427 (1926) (decided under former Code 1910, § 1551 (104)).

**Cited** in Hicks v. Groves, 177 Ga. 574, 170 S.E. 877 (1933).

## OPINIONS OF THE ATTORNEY GENERAL

**Unconstitutional not to discharge school obligations within year incurred.** — Neither Board of Educ. v. Thurmond, 162 Ga. 58, 132 S.E. 427 (1926), nor Board of Educ. v. Board of Trustees of Fort Valley Consol. School

Dist., 170 Ga. 509, 153 S.E. 214 (1930), can properly be construed as upholding the constitutionality of school obligations not to be discharged within the year in which the obligations are incurred. 1969 Op. Att'y Gen. No. 69-160.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, §§ 247, 249.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 707 et seq.

**ALR.** — Right of person advancing money for public school purposes to be reimbursed, 50 ALR 1291.

## 20-2-393. Interest.

Any county board of education borrowing money under this part shall borrow it at as low a rate of interest as possible. The county board is authorized to pay the interest on the money out of the public school fund for the county. (Ga. L. 1919, p. 288, § 98; Code 1933, § 32-924.)



## JUDICIAL DECISIONS

**Cited** in *Hicks v. Groves*, 177 Ga. 574, 170 S.E. 877 (1933).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, §§ 247, 249.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 707 et seq.

**20-2-394. Information in reports to grand juries.**

Reserved. Repealed by Ga. L. 1994, p. 607, § 11, effective July 1, 1994.

**Editor's notes.** — This Code section was based on Ga. L. 1919, p. 288, § 99; Code 1933, § 32-925.

**20-2-395. Notes for money borrowed.**

After the resolution provided for in Code Section 20-2-391 has been passed by any county board of education, the chairman of the county board, together with the county school superintendent, shall have the right to execute a note or notes in the name of the county board for any money that is authorized to be borrowed under the resolution passed by the county board. (Ga. L. 1919, p. 288, § 100; Code 1933, § 32-926.)

## JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, a decision under former Code 1910, § 1551, which was subsequently repealed but was succeeded by provisions in this Code section, is included in the annotations for this Code section.

**Prerequisite condition to right to borrow money.** — Neither the record on the minutes of the board of the board's resolution to borrow money nor the signing of the minutes by the president (now

the chair) is a mandatory or prerequisite condition to the right to borrow money and execute notes for school purposes. *American Sur. Co. v. Citizens' Bank*, 48 Ga. App. 448, 172 S.E. 801 (1934), *aff'd*, 180 Ga. 827, 180 S.E. 635 (1935) (decided under former Code 1910, § 1551).

**Cited** in *Citizens' Bank v. American Sur. Co.*, 174 Ga. 852, 164 S.E. 817 (1932); *Hicks v. Groves*, 177 Ga. 574, 170 S.E. 877 (1933).

## RESEARCH REFERENCES

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 707 et seq.

20-2-396. Use of borrowed money.

When any money shall be borrowed under this part, it shall be paid over to the county school superintendent and become a part of the public school fund of the county. The superintendent shall be responsible for any money borrowed and received under the authority of this part in the same way and to the same extent that he is responsible for any other public schools funds. (Ga. L. 1919, p. 288, § 101; Code 1933, § 32-927; Ga. L. 1964, p. 169, § 1.)

JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, a decision under former Code 1910, § 1551(108), which was subsequently repealed but was succeeded by provisions in this Code section, is included in the annotations for this Code section.

**County superintendent is the re-**

**sponsible disbursing officer of borrowed funds.** *Ferguson v. Smith*, 27 Ga. App. 806, 110 S.E. 42 (1921) (decided under former Code 1910, § 1551(108)).

**Cited in** *Hicks v. Groves*, 177 Ga. 574, 170 S.E. 877 (1933); *Leoles v. Landers*, 184 Ga. 580, 192 S.E. 218 (1937).

RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, §§ 263, 346. 68 Am. Jur. 2d, Schools, § 115.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 144. 78A C.J.S., Schools and School Districts, § 726.

**ALR.** — Particular purposes within contemplation of statute authorizing issuance of bonds or use of funds by school district for specified purposes, 124 ALR 883.

PART 2

RECEIPT AND DISBURSEMENT OF FUNDS

20-2-410. Liability for and distribution of funds.

When the funds drawn under apportionment and any funds raised by local taxation are placed in the hands of any county school superintendent, he shall be liable on his official bond as treasurer for all amounts received and shall disburse the funds only upon the order of the county board of education; and the superintendent shall not be entitled to compensation for receiving any funds as provided in this Code section. (Ga. L. 1919, p. 288, § 114; Code 1933, § 32-941.)

JUDICIAL DECISIONS

**County superintendent cannot contract debt on behalf of county board** without previous authority from board;

nor, in the absence of such authority, can the county superintendent dispose of county funds before the funds are col-

lected. *American Ins. Co. v. Seminole County Bd. of Educ.*, 51 Ga. App. 808, 181 S.E. 783 (1935). **Cited in** *Mathew v. Ellis*, 214 Ga. 665, 107 S.E.2d 181 (1959).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 110, 115. **ALR.** — Right of school district to maintain action based on misapportionment of school money, 105 ALR 1273.  
**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 228 et seq., 699 et seq.

### 20-2-411. School fund kept separate; use of funds; separation of school taxes; investments.

When the public school fund shall be received and receipted for, it shall be the duty of the officers authorized by law to receive such fund and keep it separate and distinct from other funds. The school funds shall be used for educational purposes and may be used to pay the salaries of personnel and to pay for the utilization of school facilities, including school buses, for extracurricular and interscholastic activities, including literary events, music and athletic programs within individual schools and between schools in the same or in different school systems when such activities are sponsored by local boards of education as an integral part of the total school program, and for no other purpose. When taxes are paid into the state treasury, the Comptroller General shall in no case receipt a tax collector for them until that part of the tax so paid in which was raised for school purposes is separated in amount from the gross amount paid in. It shall be lawful to invest school funds in securities of the states, United States, or municipalities of this state or in certificates of deposit. (Ga. L. 1919, p. 288, § 115; Code 1933, § 32-942; Ga. L. 1969, p. 721, § 1; Ga. L. 1975, p. 94, § 1; Ga. L. 1985, p. 149, § 20.)

**Cross references.** — Expenditures for uniforms for maintenance, food service, or custodial personnel, § 20-2-980. **Law reviews.** — For article, "Education Law," see 53 Mercer L. Rev. 281 (2001).

### JUDICIAL DECISIONS

**Cited in** *Burke v. Wheeler County*, 54 Ga. App. 81, 187 S.E. 246 (1936); *Tripp v. State*, 89 Ga. App. 335, 79 S.E.2d 591 (1953); *Oconee County v. Rowland*, 107 Ga. App. 108, 129 S.E.2d 373 (1962); *Fulton County v. Fulton County Sch. Dist.*, 246 Ga. App. 631, 542 S.E.2d 507 (2000).

### OPINIONS OF THE ATTORNEY GENERAL

#### ANALYSIS

GENERAL CONSIDERATION  
EDUCATIONAL PURPOSES  
1. IN GENERAL



2. SCHOOL FACILITIES
3. EXTRACURRICULAR AND INTERSCHOLASTIC ACTIVITIES
4. OTHER PROGRAMS
5. ASSESSMENT AND COLLECTION OF TAXES
6. EMPLOYEE BENEFITS AND INSURANCE

#### INVESTMENT OF FUNDS

### General Consideration

**Surplus funds from tax levy paid to board.** — Any surplus funds from a tax levy, to meet payments on a board of education bonded indebtedness, must be paid to the board of education and cannot be retained by the county. 1954-56 Op. Att'y Gen. p. 250.

**Use of school buses by community groups.** — Local board of education may not allow community organizations or private recreational organizations to use a school bus for purposes other than transporting pupils to and from schools or activities which are an integral part of the educational program, even if the group pays all expenses associated with the use of the bus, except that local boards may allow community organizations or private recreational organizations to use school buses to provide transportation for the elderly and the handicapped if the costs of such transportation is reimbursed in full from funds other than school funds. 1985 Op. Att'y Gen. No. 85-34.

**Sharing of services between boards of education unauthorized.** — Georgia boards of education are not empowered to share services by creating and utilizing a nonprofit corporation such as the Consortium for Adequate School Funding in Georgia, Inc., for the purpose of challenging state school funding by litigation or otherwise. 2009 Op. Att'y Gen. No. 2009-3.

### Educational Purposes

#### 1. In General

**Expression “for educational purposes” is to be given the broadest significance;** the expression is broad enough to cover all things necessary or incidental to the furtherance of education, but the scope of the expression does not extend to any measure that might incidentally prove to be of assistance to a program of education. 1975 Op. Att'y Gen. No. 75-33.

**No public school may sponsor any activity that is not for educational purposes.** 1954-56 Op. Att'y Gen. p. 269.

**Paying of state sales taxes out of school funds.** — In the event that schools are liable for the schools' past failures to collect and remit sales taxes, the assessments may not be paid out of the public school funds; public school funds shall be used for educational purposes and none other and the paying of state sales taxes out of public school funds could not conceivably be considered a payment for “educational purposes.” 1973 Op. Att'y Gen. No. 73-83.

**Board cannot use the board's funds** for laying out, altering, maintaining, and improving public, county-maintained road even though school transportation would be facilitated thereby; it is the sole duty and responsibility of the local officials in charge of county matters to lay out, alter, maintain, and improve the road in the manner the officials deem best suited to the needs of the county. 1962 Op. Att'y Gen. p. 189.

**Board cannot use funds for red light on state highway.** — Expenditure of public school funds for a red light located on a state highway one-half mile from the public school would not be for “educational purposes.” 1957 Op. Att'y Gen. p. 116.

**School funds cannot be used to purchase billboard space** by a local school system for the display of public relations advertisements. 1984 Op. Att'y Gen. No. 84-85.

**School funds cannot be used for paying rewards.** — Expenditure of school funds for the payment of rewards offered for information concerning damage to and destruction of school property is not an expenditure for “educational purposes,” and therefore not a lawful use of general school funds. 1974 Op. Att'y Gen. No. 74-122.

**Expending school funds to obtain a water supply for a school is for “edu-**

**Educational Purposes (Cont'd)****1. In General (Cont'd)**

**cational purposes**"; the board of education has authority to enter into a contract with a municipality for that purpose. 1954-56 Op. Att'y Gen. p. 244.

**Street assessments.** — It is a proper school expenditure for a board of education to pay street assessments. 1954-56 Op. Att'y Gen. p. 244.

**Chamber of Commerce dues.** — Local school funds may not be used to pay chamber of commerce membership dues of the county school superintendent. 1990 Op. Att'y Gen. No. U90-3.

**2. School Facilities**

**Use of funds for library facilities deemed expenditure for educational purposes.** — In view of the inherent nature of library facilities as a learning tool and the pervasive relationship between educational authorities and library systems on both state and local governmental levels, together with the state legislative policy that establishment of a public library service is to be part of the provisions for public education in this state, the use of school funds for construction of public library facilities is an expenditure for educational purposes. 1975 Op. Att'y Gen. No. 75-33.

**Expenditure of funds for leased premises authorized.** — An expenditure of school tax funds for the repair, maintenance, and upkeep of leased premises is authorized under the provisions. 1960-61 Op. Att'y Gen. p. 170.

**Board can sell building when not necessary or convenient for school purposes.** — County board of education can sell any school building when the board by resolution declares that the building is not necessary or convenient for school purposes, but all money received from the sale can be used by the board of education for school purposes and none other, i.e., the board cannot legally make a contribution to a health center nor buy any property which is not to be used for school purposes. 1954-56 Op. Att'y Gen. p. 223.

**Board can run board's sewer lines to city's and purchase sewage dis-**

**posal services.** — Expenditure of public school funds by a county board of education to run sewer lines from the schools to the city sewer lines on nearby city streets, and to purchase sewage disposal services from the city, would not violate any constitutional or statutory provision of the State of Georgia. 1967 Op. Att'y Gen. No. 67-85.

**3. Extracurricular and Interscholastic Activities**

**Public school funds cannot lawfully be expended for extracurricular athletic teams** such as football and basketball teams. 1971 Op. Att'y Gen. No. 71-10 (decided under former Code 1933, § 32-942, prior to amendment by Ga. L. 1975, p. 94, § 1; see the annotation from 1979 Op. Att'y Gen. No. U79-6 that follows).

**Validity of Op. Att'y Gen. No. 71-10 is retained in a general sense** with respect to any prohibitions on expenditures for extracurricular athletic programs other than those enumerated in Ga. Const. 1976, Art. VII, Sec. II, Para. I (see Ga. Const. 1983, Art. VII, Sec. III, Para. I, and former Code 1933, § 32-941). 1979 Op. Att'y Gen. No. U79-6.

**Board can improve football field only if board has property title.** — County board of education can expend school funds on improving a football field only if title to the property is in the board (this would exclude a nonprofit athletic association). 1954-56 Op. Att'y Gen. p. 245.

**Lease of vehicles for extracurricular use not authorized.** — Local board of education may not provide transportation to students for extracurricular activities by leasing vehicles for that use. 1995 Op. Att'y Gen. No. 95-2.

**Debate programs may be supported with tax funds.** — Local school boards may spend state and local tax funds to maintain a debate program. These expenditures may include payment of debate meet registration fees for individuals and schools. 1981 Op. Att'y Gen. No. 81-20.

Individual and school registration fees and costs for student room and board while they are away from home at centrally located debate meets are necessary



and incidental to the educational process and may be paid with funds derived from local taxation. 1981 Op. Att'y Gen. No. 81-20.

State tax funds may be spent on individual and school registration fees for centrally located debate meets, but may not be spent on either room or board for students attending such meets. 1981 Op. Att'y Gen. No. 81-20.

Only local tax funds may be spent for the necessary costs of room and board for students while the students are away from home at debate meets. 1981 Op. Att'y Gen. No. 81-20.

#### 4. Other Programs

**“Medical services” area not wholly within or without limits of lawful expenditures.** — Answering of the question of whether a given expenditure can be said to be an expenditure for “school purposes” is exceedingly difficult and an area as broad as “medical services” is not one which can be said to be either wholly within or wholly without the outer limits of lawful expenditures for “school purposes.” 1977 Op. Att'y Gen. No. 77-52.

**Funds not usable for medical treatment beyond evaluation necessary to place child.** — Neither the State Board of Education nor local boards of education can lawfully use school funds for medical (including psychiatric) treatment or services beyond such evaluation as is necessary to the placement and the determination of the proper educational program for a given child. 1979 Op. Att'y Gen. No. 79-1.

**Medical services directly related to school operations can be supported.** — Medical services directly related to the actual conduct of school operations with minimum interruption can be supported with school funds. 1977 Op. Att'y Gen. No. 77-52.

**No funds usable for lunches for nonpublic school children.** — Neither state nor local school funds may be used to provide lunches for children not enrolled in the public school program. 1974 Op. Att'y Gen. No. 155.

**School funds may not legally be used to purchase uniforms for school**

**lunch personnel.** 1967 Op. Att'y Gen. No. 67-182.

**Local boards may expend funds for supplies used in physical education programs.** — Since physical education is a prescribed course of study for all common schools, local boards of education may legally expend public school funds for physical education supplies to be used in the schools' physical education programs. 1957 Op. Att'y Gen. p. 115.

#### 5. Assessment and Collection of Taxes

**Collection of taxes for public schools** is not a proper function of the county board of education; the board only recommends to the fiscal authorities of the county the rate of levy to be made for taxes for the support and maintenance of education in the county. 1958-59 Op. Att'y Gen. p. 128.

**Tax collection expenses.** — It is illegal for school board to expend funds to help defray tax collection expenses of the county tax commissioner. 1965-66 Op. Att'y Gen. No. 65-3.

**County cannot pay for surveying and appraising taxable property for school taxes.** — County which contracts for the surveying and appraisal of taxable property may not pay any part of the cost of such services from the taxes levied for school purposes. 1952-53 Op. Att'y Gen. p. 341.

**Board cannot expend funds to pay charges for collection of delinquent taxes.** — Since the collection of taxes is not a proper function of a county board of education, the board cannot legally expend public school funds to pay any part of the cost of charges made by the county attorney to the commissioners of roads and revenues (now board of county commissioners) for the collection of delinquent taxes. 1958-59 Op. Att'y Gen. p. 128.

#### 6. Employee Benefits and Insurance

**Providing “cafeteria” plan of fringe benefits.** — Local boards of education may provide teachers and employees the “cafeteria” plan of fringe benefits allowed in § 125 of the Internal Revenue Code as an optional program, paid for by local



**Educational Purposes (Cont'd)****6. Employee Benefits and Insurance (Cont'd)**

supplement rather than the state's portion of salaries allocated under former § 20-2-220 (see O.C.G.A. § 20-2-182). 1984 Op. Att'y Gen. No. U84-6.

**Public school funds cannot be used to purchase a home for teachers.** — 1954-56 Op. Att'y Gen. p. 291.

**"Educational purposes" do not include workers' compensation expenditures.** — Although counties may tax to provide for workers' compensation, "educational purposes" do not include expenditures for workers' compensation. 1958-59 Op. Att'y Gen. p. 125 (decided under Ga. Const. 1945, Art. VII, Sec. IV, prior to amendment by Ga. L. 1966, p. 106; see now Ga. Const. 1983, Art. IX, Sec. IV, Para. II).

Educational funds of a county cannot be used to provide for workers' compensation for employees of a county board of education; this would be true as to the cost of the insurance coverage or qualifying as a self-insurer. 1958-59 Op. Att'y Gen. p. 125 (decided under Ga. Const. 1945, Art. VII, Sec. IV, prior to amendment by Ga. L. 1966, p. 106; see now Ga. Const. 1983, Art. IX, Sec. IV, Para. II).

**Funds for workers' compensation coverage must be furnished by county's governing authority.** — Since school funds cannot be used for workers' compensation coverage, it is necessary that the funds for the coverage of school employees be furnished by the governing authority of the county in which the school system is located. 1958-59 Op. Att'y Gen. p. 406 (decided under Ga. Const. 1945, Art. VII, Sec. IV, prior to amendment by Ga. L. 1966, p. 106; see now Ga. Const. 1983, Art. IX, Sec. IV, Para. II).

**Board cannot pay premiums on liability insurance except as stated in insurance provisions.** — It is clear that a local board of education cannot expend

school money to pay premiums on liability insurance except under the conditions and circumstances stated in Ga. L. 1949, p. 1155, §§ 1 and 2. 1957 Op. Att'y Gen. p. 116.

**Expenditures for physical examination, faculty banquet, and insurance premiums improper.** — Expenditures for an annual physical examination of the school superintendent, for a faculty banquet, and for payment of insurance premiums for members of a high school football team would be improper objects for the expenditure of school funds. 1971 Op. Att'y Gen. No. 71-12.

**Purchase of a liability insurance policy** which covers school officials and employees against injuries a student might receive while participating in an extracurricular athletic activity is a valid expenditure of school funds by a school district. 1984 Op. Att'y Gen. No. 84-66.

**Investment of Funds**

**"Certificates of deposit" defined.** — Phrase "certificates of deposit" applies to certificates of deposit issued by commercial banks and to certificates of deposit issued by federal or state chartered savings and loan associations; the investment of school funds in "certificates of deposit" issued by other institutions would present a question of whether the investment would be prudent and in the exercise of sufficient care and diligence. 1969 Op. Att'y Gen. No. 69-306.

**Local officials responsibility for investment loss.** — Local school officials, in making legally authorized investments of local school funds, are not responsible if the investment results in a loss rather than a gain, so long as the investment, at the time the investment was made, was reasonably prudent and cautious under the circumstances, and especially if the loss is occasioned by economic conditions over which the officials have no control. 1969 Op. Att'y Gen. No. 69-306.

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 110, 125, 126, 135 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 699 et seq.

**ALR.** — Nature and extent of transportation that must be furnished under statute requiring free transportation of school pupils, 52 ALR3d 1036.

### PART 3

#### BOND ISSUES

#### JUDICIAL DECISIONS

**Cited** in Davis v. Board of Educ., 203 Ga. 44, 45 S.E.2d 429 (1947); ABC Sch. Supply, Inc. v. Brunswick-Balke-Collender Co., 97 Ga. App. 84, 102 S.E.2d 199 (1958).

#### OPINIONS OF THE ATTORNEY GENERAL

**County board cannot convey property to trustees to create debt to be retired from revenues.** — County board of education would not have the right to convey school property to the trustees for the purpose of enabling the trustees to create against the property a debt to be retired from the revenues derived by the trustees for the use of the property, and with the intent after such debt has been retired to reconvey the property to the county board. 1945-47 Op. Att'y Gen. p. 168.

#### RESEARCH REFERENCES

**ALR.** — Title to buildings when school lands revert for nonuse for school purposes, 28 ALR2d 564.

### Subpart 1

#### County, District, and Joint High School Bonds

#### 20-2-430. Issuance and retirement of county schoolhouse bonds.

When any county board of education shall deem it to the best interests of education in the county to incur any bonded debt for building, equipping, or purchasing sites for the building and equipping of schoolhouses pursuant to Article IX, Section V, Paragraphs I and IV of the Constitution of Georgia, the election required shall be called and held in the manner prescribed by Article 1 of Chapter 82 of Title 36, and the bonds shall be validated in the manner provided by Part 1 of Article 2 of Chapter 82 of Title 36. The purpose of this Code section is to permit and require the same procedure to be followed in the voting, issuance, levying of taxes for, and the retirement of bonds issued by county boards for building and equipping schoolhouses or purchasing sites therefor as is required in the case of municipalities and other county bonds; provided, however, that in any such election persons residing within territorial limits of independent school districts may not participate as qualified voters in the election, and should the election result favorably to the issuance of the bonds, the property located within the limits of an

independent school district shall not be subject to taxation for the retirement of any bonds so issued. (Ga. L. 1919, p. 288, § 145; Ga. L. 1921, p. 221, § 2; Code 1933, § 32-1403; Ga. L. 1946, p. 206, § 23; Ga. L. 1983, p. 3, § 53.)

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION ELECTIONS

##### General Consideration

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1551(155), which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Act creating this section was not unconstitutional** as containing more than one subject matter and containing matter different from that expressed in the title. *Posey v. Dooly County Sch. Dist.*, 215 Ga. 712, 113 S.E.2d 120 (1960) (see O.C.G.A. § 20-2-340).

**Section is not in conflict with the constitution.** *Jennings v. New Bronwood Sch. Dist.*, 156 Ga. 15, 118 S.E. 560 (1923) (decided under former Code 1910, § 1551(155)).

School district created under this subpart is a political division of the state as contemplated by the constitution and, therefore, these provisions conferring power to create bonded indebtedness to build schoolhouses are valid. *Ty Ty Consol. Sch. Dist. v. Colquitt Lumber Co.*, 153 Ga. 426, 112 S.E. 561 (1922) (decided under former Code 1910, § 1551(155)); *Jennings v. New Bronwood Sch. Dist.*, 156 Ga. 15, 118 S.E. 560 (1923) (decided under former Code 1910, § 1551(155)).

**Combining proposals.** — School board's decision to combine multiple bond projects into a single referendum was conduct or activity which affected voting within the meaning of the federal Voting Rights Act, 42 U.S.C. § 1973 et seq. *Lucas v. Townsend*, 908 F.2d 851 (11th Cir. 1990), vacated on other grounds, 501 U.S. 1226, 111 S. Ct. 2845, 115 L. Ed. 2d 1013, 943 F.2d 38 (11th Cir. 1991).

##### School districts may sue or be sued.

— This subpart in effect makes school districts such subdivisions of the county and the state that the districts may sue or be sued. *Ty Ty Consol. Sch. Dist. v. Colquitt Lumber Co.*, 153 Ga. 426, 112 S.E. 561 (1922) (decided under former Code 1910, § 1551(155)); *Jennings v. New Bronwood Sch. Dist.*, 156 Ga. 15, 118 S.E. 560 (1923) (decided under former Code 1910, § 1551(155)).

**Taxpayer who fails to make oneself party to bond validation proceedings cannot enjoin tax levy.** — When an election held under this section to determine whether bonds should be issued resulted in favor of the issuance and the bonds were duly validated, a citizen and taxpayer of the district who could have made oneself a party to the proceedings to validate the bonds, but failed to do so, was concluded by the judgment rendered and could not thereafter enjoin the levy and collection of a tax to pay the interest and principal of the bonds, and their issuance and sale, on the ground that there had never been legally levied a local tax for school purposes. *Whiddon v. Fletcher*, 150 Ga. 39, 102 S.E. 350 (1920) (decided under former Code 1910, § 1551(155)).

**Cited in** *Davis v. Board of Educ.*, 203 Ga. 44, 45 S.E.2d 429 (1947); *Williams v. Ragsdale*, 205 Ga. 274, 53 S.E.2d 339 (1949).

##### Elections

**School districts authorized to call elections are:** (1) districts in which a local tax is now or may hereafter be levied for school purposes; and (2) districts in a county now levying a local tax. *Sheffield v. Patmos Sch. Dist.*, 157 Ga. 660, 122 S.E.



57 (1924). See also *Lindsey v. Wall*, 149 Ga. 617, 101 S.E. 537 (1919) (decided under former Code 1910, § 1551(15)).

**Trustees required to comply with Code Sections 36-82-1 et seq.** — Section requires that the trustees shall follow the law as required in former Civil Code 1910, § 440 (see O.C.G.A. § 36-82-1 et seq.) in the issuance of the bonds. *Veal v. Deepstep Consol. Sch. Dist.*, 34 Ga. App. 67, 128 S.E. 223 (1925) (decided under former Code 1910, § 1551(15)).

**Qualified voters needed to create bonded debt.** — Two-thirds of the qualified voters of the district required in favor of bonds need be only that proportion of the qualified voters voting in the election, provided that that proportion is also a majority of the total registered voters. *Chapman v. Sumner Consol. Sch. Dist.*, 152 Ga. 450, 109 S.E. 129 (1921) (decided under former Code 1910, § 1551(15)); *Chapman v. Sumner Consol. Sch. Dist.*, 28 Ga. App. 152, 110 S.E. 453 (1922) (decided under former Code 1910, § 1551(15)).

Consolidated school district cannot create a bonded debt without the assent of two-thirds of the qualified voters thereof voting at an election for that purpose, to be held as prescribed by law; such two-thirds must constitute a majority of the registered voters. *Buchanan v. Woodland Consol. Sch. Dist.*, 168 Ga. 626, 148 S.E. 663 (1929) (decided under former Code 1910, § 1551(15)).

**To entitle a voter to vote,** the voter's name must appear on the list of registered voters filed by the county register (now the registrars) with the clerk of the superior court of the county. *Chapman v. Sumner Consol. Sch. Dist.*, 152 Ga. 450, 109 S.E. 129 (1921) (decided under former Code 1910, § 1551(15)); *Chapman v. Sumner Consol. Sch. Dist.*, 28 Ga. App. 152, 110 S.E. 453 (1922) (decided under former Code 1910, § 1551(15)).

**Voter must have taken prescribed oath.** — While the appearance of the voter's name on the voter's book of the tax collector of the county is prima facie evidence that the voter took the oath prescribed by law, the voter must legally have taken the oath, otherwise the voter's voting is illegal. *Chapman v. Sumner Consol. Sch. Dist.*, 152 Ga. 450, 109 S.E. 129

(1921) (decided under former Code 1910, § 1551(15)); *Chapman v. Sumner Consol. Sch. Dist.*, 28 Ga. App. 152, 110 S.E. 453 (1922) (decided under former Code 1910, § 1551(15)).

**When tax collector goes over furnished list and strikes names, registrable voters selected by the tax collector.** — When the tax collector took the list furnished by the trustees, went over the list, and struck from the list such names as the tax collector thought did not belong there, the voters entitled to registration were selected by the tax collector and not by the trustees of the school district, the managers of the election, or the attorney for the trustees who copied the list at the request of the collector. *Hawthorne v. Turkey Creek Sch. Dist.*, 162 Ga. 462, 134 S.E. 103 (1926) (decided under former Code 1910, § 1551(15)).

**Election not vitiated by registered voters list made from tax collector's book.** — For the ordinary (now the registrars) to make up a list of registered voters from the voters book of the tax collector rather than from the list of the superior court clerk, while irregular, would not operate to vitiate an election if it does not appear that the list as certified and furnished was in fact incorrect. *Powell v. Consolidated Sch. Dist. No. 1*, 26 Ga. App. 135, 105 S.E. 616 (1921) (decided under former Code 1910, § 1551(15)).

**Thirty (30) days' notice required for bonds' issuance.** — As a condition precedent to the holding of an election for school bonds a notice of the election must be published for 30 days next preceding the day of the election in the newspaper in which the sheriff's advertisements for the county are published. *Burnam v. Rhine Consol. Sch. Dist.*, 35 Ga. App. 110, 132 S.E. 137 (1926) (decided under former Code 1910, § 1551(15)).

**Declaration of election results.** — Board of trustees or board of education declares result of the election under this section. By this provision, a majority of the trustees may hold the election. *Stephens v. School Dist. No. 3*, 154 Ga. 275, 114 S.E. 197 (1922) (decided under former Code 1910, § 1551(15)).

**Election results notice signed by trustees' attorney sufficient.** — Notice

**Elections (Cont'd)**

required by former Civil Code 1910, § 445 (see O.C.G.A. § 36-82-20) was signed by two of the trustees by their attorney and

this was a sufficient compliance with this section. *Stephens v. School Dist. No. 3*, 154 Ga. 275, 114 S.E. 197 (1922) (decided under former Code 1910, § 1551(155)).

**OPINIONS OF THE ATTORNEY GENERAL**

**County education board is proper authority to authorize holding of school bond referendum.** 1985 Op. Att'y Gen. No. 85-18.

**County board may call election even though no petition filed.** — County board of education, if the board sees fit, may call an election to determine whether or not a bonded indebtedness may be incurred by the county to build schoolhouses even though there is no petition filed by the people asking for the election. 1945-47 Op. Att'y Gen. p. 175.

**Election and tax levy county-wide.** — County board of education is the proper authority to call an election for the issuance of school bonds and the election and tax levy is county-wide, excluding independent systems located therein. 1945-47 Op. Att'y Gen. p. 168.

**General election registration list to be used in schoolhouse bond election.** — Proper registration list to be used in a schoolhouse bond election is the registration list used for the last general election. 1962 Op. Att'y Gen. p. 234.

**Ballots to be furnished and election managers appointed by county board.** — Ballots in school bond elections shall be furnished and the election managers appointed by the county board of education. 1950-51 Op. Att'y Gen. p. 44.

**School bond election called by county board may be held concurrently with the general election.** 1965-66 Op. Att'y Gen. No. 65-9.

**Appropriate use of bond proceeds.** — Georgia Constitution and Georgia statutes do not provide any latitude to use bond proceeds for additional capital expenditures whether or not the proceeds are spent on projects which may have been approved by the voters at the time of the original bond referendum. Accordingly, all proceeds generated at closing of the refunding issue should be spent on costs of the refunding or used to pay

principal, interest, and premiums on the refunded debt. Furthermore, a new tax levy appropriately sized to retire the new refunding bonds should be provided for prior to issuance of the refunding bonds. If any excess proceeds result from the new tax levy, such excess proceeds shall not be available for transfer to capital projects until all refunds are repaid. 1994 Op. Att'y Gen. No. 94-8.

**Purchase of school buses** cannot be included in listing of acceptable purposes for bond indebtedness because the language of Ga. L. 1946, pp. 206 and 216 circumscribes the incurring of bonded indebtedness by counties for educational purposes to those expenditures related to the actual physical plant of the school. 1975 Op. Att'y Gen. No. 75-94.

**Construction of school system administration, bus maintenance, bus storage, and warehouse facilities.** — Proceeds of general obligation bonds issued under O.C.G.A. §§ 20-2-430 and 20-2-431 may not be used for school administration, bus maintenance and bus storage, and warehouse facilities; but bonds may be issued for such purposes upon compliance by the county school board with the notice and purpose requirements set forth in O.C.G.A. § 36-82-1 et seq. 1998 Op. Att'y Gen. No. 98-12.

**Commencing school construction prior to voter approval of bond issue not illegal.** — While commencing school construction which is intended to be financed through the sale of school bonds prior to voter approval and validation of the bond issue is questionable from a fiscal viewpoint, it is not illegal. 1963-65 Op. Att'y Gen. p. 789.

**School bond issue requires assent of majority of qualified voters.** — School bond issue requires the assent of a simple majority of the qualified voters in the school bond election. 1963-65 Op. Att'y Gen. p. 769.



**County school district may issue up to 7 percent of assessed tax value of property** of the county, excluding territory in independent systems, and the county can also issue bonds for a like 7 percent of the assessed tax value. 1945-47 Op. Att'y Gen. p. 166.

**When school systems merge.** — It is the general rule that when one school system having a bonded indebtedness is

merged with another school system, taxes levied for the purpose of paying off the bonded indebtedness may be levied only on property located within the territorial limits of the school system issuing the bonds as such territorial limits existed at the time the bonds were originally voted and issued. 1965-66 Op. Att'y Gen. No. 66-11.

### RESEARCH REFERENCES

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 756 et seq., 761, 762, 765 et seq., 773 et seq., 784.

**ALR.** — Validity of submission of prop-

osition to voters at bond election as affected by inclusion of several structures or units, 4 ALR2d 617.

### 20-2-431. Division of county into schoolhouse districts; issuance and retirement of district bonds.

(a) Whenever the county board of education of any county of this state deems it necessary for the purpose of securing proper school sites and buildings and to the best interest of education in the county, the county board shall have the power and authority to divide all of the territory of the county outside of independent school districts into local subdivisions to be known as local schoolhouse districts. Whenever the county board divides the county into local subdivisions, the entire county shall be so divided into separate subdivisions. The local subdivisions so set up and established shall be clearly and positively defined by the resolution passed by the county board establishing such subdivisions. The local subdivisions shall be marked off in the manner which the county board deems to be most advantageous to the school interest of the county. The county board shall act as officers of such local subdivisions and as such is authorized to incur bonded indebtedness for the purpose of purchasing school sites and for building and equipping, enlarging, and repairing schoolhouses, to include building and equipping, enlarging, and repairing lunchrooms and vocational and physical education buildings and facilities in and for such local subdivisions. The bonded indebtedness which the county board is authorized by this Code section to incur shall be incurred pursuant to Article IX, Section V, Paragraphs I and IV of the Constitution of Georgia. An election for bonds for such local subdivisions shall be called and held in the manner prescribed by Article 1 of Chapter 82 of Title 36, and the bonds shall be validated in the manner prescribed by Part 1 of Article 2 of Chapter 82 of Title 36. The purpose of this Code section is to permit and to require the same procedure to be followed in the voting, issuance, levying of taxes for, and the retirement of bonds issued by the county boards for local subdivisions established under this Code section for building and



equipping, enlarging, and repairing schoolhouses, to include building and equipping, enlarging, and repairing lunchrooms and vocational and physical education buildings and facilities, or purchasing sites therefor as is required in the case of municipalities and other county bonds; provided, however, that where the county board divides the county into subdivisions and seeks to issue bonds for any one of the local subdivisions, persons residing outside of the local subdivision may not participate as qualified voters in the election. Should the election held in a local subdivision result favorably to the issuance of bonds for such local subdivision, the property located within such local subdivision as marked off and established by the county board shall be subject to taxation for the retirement of bonds issued by the county board for such local subdivision. The property located outside of such subdivision shall not be subject to taxation for the retirement of any bonds issued for the local subdivision.

(b) It is not intended that subsection (a) of this Code section shall in any way interfere with the county board issuing bonds on a county-wide basis as provided for in Code Section 20-2-430. The purpose of subsection (a) of this Code section is to give to the county board additional powers so that the county board may provide adequate school sites, buildings, and equipment in counties and under circumstances where county-wide bond issues for securing school sites and buildings and equipping schoolhouses prove inadequate and inequitable because of prior existing bonded indebtedness of local districts, or otherwise. (Ga. L. 1947, p. 1186, §§ 1, 2; Ga. L. 1949, p. 688, §§ 1, 2; Ga. L. 1983, p. 3, § 53.)

### JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 32-1403.1, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Section was repugnant to the 1945 Constitution.** Davis v. Board of Educ., 203 Ga. 44, 45 S.E.2d 429 (1947) (decided under former Code 1933, § 32-1403.1, prior to amendment by Ga. L. 1949, p. 688, §§ 1, 2).

**Primary purpose of this section** was to provide for the acquisition of schoolhouse sites, the building and equipping of school houses, and a scheme for financing such undertakings in local schoolhouse districts to be established in some of the counties of this state. Davis v. Board of Educ., 203 Ga. 44, 45 S.E.2d 429 (1947) (decided under Ga. L. 1947, p. 1186, prior to amendment by Ga. L. 1949, p. 688, §§ 1, 2).

**Cited in** Williams v. Ragsdale, 205 Ga. 274, 53 S.E.2d 339 (1949).

### OPINIONS OF THE ATTORNEY GENERAL

**Money from bond issue for "equipment" usable for library books.** — Money obtained from a local bond issue for the purpose of buildings and "equip-

ment" may be used to purchase books for the library. 1954-56 Op. Att'y Gen. p. 246.

**Construction of school system administration, bus maintenance and**

**bus storage, and warehouse facilities.**

— Proceeds of general obligation bonds issued under O.C.G.A. §§ 20-2-430 and 20-2-431 may not be used for school administration, bus maintenance, bus storage, and warehouse facilities; but bonds

may be issued for such purposes upon compliance by the county school board with the notice and purpose requirements set forth in O.C.G.A. § 36-82-1 et seq. 1998 Op. Att'y Gen. No. 98-12.

**20-2-432. Joint county-city high schools — Power to contract for building and maintenance.**

Counties and municipalities located therein having independent school systems supported in whole or in part by local taxation may contract with each other for the joint building and maintenance of high school buildings to be located within such municipalities for the joint use of the children living in such municipalities and those living in the county outside of the limit of such municipalities. (Ga. L. 1923, p. 98, § 1; Code 1933, § 32-1404.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 92.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 566 et seq.

**20-2-433. Joint county-city high school contracts for building and maintenance — Approval and confirmation.**

The contract provided for in Code Section 20-2-432 shall be entered into, in the first instance, by the city board of education and county board of education or by other authorities by whatever name called having charge of the educational affairs of the city and county, respectively, upon such terms and conditions as may be agreed on and shall then be approved and confirmed by the mayor and council and board of county commissioners or other authorities by whatever name called having charge of the fiscal affairs of the city and county, respectively. (Ga. L. 1923, p. 98, § 2; Code 1933, § 32-1405.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 92.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 566 et seq.

**20-2-434. Joint county-city high school contracts for building and maintenance — Issuance of bonds; elections.**

When the contract has been made and approved as provided in Code Sections 20-2-432 and 20-2-433, then the authorities of the county and municipality having charge of their fiscal affairs may issue bonds for their proportion of the cost of such buildings, as agreed on, in the manner provided by law for the issuance of bonds by a county or

municipality; and the call for election shall provide that if the other contracting party shall fail to carry an election for bonds for the same purpose, the election for bonds provided for in the call, even if carried, shall not be effective and that all previous acts in connection with the issuance of the bonds shall, in such event, be void and of no effect. (Ga. L. 1923, p. 98, § 3; Code 1933, § 32-1406.)

#### RESEARCH REFERENCES

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 756 et seq., 773 et seq.

### **20-2-435. Joint county-city high school contracts for building and maintenance — County and city tax levies to pay bonds and maintenance costs.**

When an election for the bonds provided for in Code Section 20-2-434 has been carried as provided by law, then the county and municipal authorities may thereafter each levy a tax sufficient to pay the principal and interest of such bonds issued by each party and the cost of maintenance of such building in addition to any other taxes they are authorized by law to levy. (Ga. L. 1923, p. 98, § 4; Code 1933, § 32-1407.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 58 et seq.

**C.J.S.** — 79 C.J.S., Schools and School Districts, § 557 et seq.

### **20-2-436. Provisions of Code Sections 20-2-432 through 20-2-435 cumulative.**

Code Sections 20-2-432 through 20-2-435 shall not be construed to be the exclusive means for the building of high school buildings, but such Code sections shall be construed to be permissive and cumulative to any other means now or hereafter provided by law. (Ga. L. 1923, p. 98, § 5; Code 1933, § 32-1408.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 9, 92.



**20-2-437. Local and consolidated school district trustees' powers and duties as to buildings and equipment transferred to county boards.**

The county board of education of each county shall succeed to and be vested with all of the rights, powers, and duties formerly vested in the local or consolidated school district trustees with respect to the building and equipping of schoolhouses in the county, preparing tax digests, and furnishing them to the tax collector of the county. (Ga. L. 1919, p. 288, § 143; Ga. L. 1921, p. 221, § 1; Code 1933, § 32-1401; Ga. L. 1946, p. 206, § 20.)

### JUDICIAL DECISIONS

**Sole purpose and effect of this section** was to transfer control and management of school property from one public agency or statutory board of trustees to another. *Veal v. Smith*, 221 Ga. 712, 146 S.E.2d 751 (1966) (see O.C.G.A. § 20-2-437).

**Cited in** *Nelms v. Stephens County Sch. Dist.*, 201 Ga. 274, 39 S.E.2d 651 (1946); *Board of Educ. v. Gray*, 203 Ga. 583, 47 S.E.2d 508 (1948); *Williams v. Ragsdale*, 205 Ga. 274, 53 S.E.2d 339 (1949).

### OPINIONS OF THE ATTORNEY GENERAL

**Title to school property of abolished local district.** — Title to school property located within the county and recorded as being owned by the trustees of an abolished local school district passes by operation of law to the county board of education upon the abolition and merger of the local school district into the county system and the same rule would follow for property held by an independent city system. 1954-56 Op. Att'y Gen. p. 266.

**School tax may be collected without deduction for preparing school digest.** — It is proper to levy and collect

the county school tax without any deduction therefrom as payment for the preparation of a separate school digest. 1965-66 Op. Att'y Gen. No. 65-62.

**County boards not authorized to make payments for digests.** — Absent valid local law to the contrary, county boards of education are not authorized to make to county tax collectors, and county tax collectors are not authorized to receive from county boards of education, payments for the preparation of county school tax digests. 1968 Op. Att'y Gen. No. 68-348.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 45, 48, 86 et seq.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 90.

**20-2-438. Local and consolidated school district bonds — Transfer to county board; disbursing funds to bondholders; recommending tax levy.**

In any local or consolidated school district in any county where there is an outstanding bonded indebtedness created for the purpose of building schoolhouses or equipping schoolhouses, the county board of

education shall, on February 1, 1946, become the trustee of all funds which shall have been or may be collected from taxes or received from other sources for the purpose of retiring the principal and interest on the bonds or for creating a sinking fund for such purpose. The county board is charged with the duty of disbursing such funds to the bondholders in accordance with the terms under which the bonds were issued and the duty of constructing any buildings or acquiring any building sites or any equipment for which the bonds were issued. The county board shall also annually, within the time required by law or the terms of the bond issue, recommend to the fiscal authorities of the county the levy upon the property subject to taxation in the district originally voting the bonds of such tax as may be necessary to provide a sinking fund for the retirement of the bonds and for paying the principal thereof and the interest thereon in accordance with the terms under which the bonds were issued, this to be in addition to the general tax for the maintenance of the schools of the districts. (Ga. L. 1919, p. 288, § 144; Ga. L. 1925, p. 251, § 1; Code 1933, § 32-1402; Ga. L. 1946, p. 206, § 21.)

### JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1919, pp. 288, 347 (former Code 1910, § 1551(157)), which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Board must expend funds only for purpose for which bonds voted.** — Plain provisions of this section under which the board of education has authority to take possession of trust funds require the board to expend the funds only for the purpose for which the bonds were voted. Board of Educ. v. Gray, 203 Ga. 583, 47 S.E.2d 508 (1948).

**When trustees' decisions appealed, county board may select site and order erection of buildings thereon.** — When properly construed, the power granted by this section gives the county board of education lawful authority to select the site and order the erection of buildings thereon when there is an appeal from the selection of the local board of

trustees, and the county board is not confined to the approval or disapproval of the site selected by the local board, but may reject that site and select an entirely different site. McCulley v. McFarland, 155 Ga. 700, 118 S.E. 52 (1923) (decided under former Code 1910, § 1551(156)).

**Tax rate.** — Last sentence of this section allowed local authorities to impose tax at a rate higher than that authorized by the constitution for general school taxation. Seaboard Air-Line Ry. v. Wright, 165 Ga. 367, 140 S.E. 863 (1927) (decided under former Code 1910, § 1551(157)).

**Trustees (now county board) authorized to sue treasurer.** — Trustees of a consolidated school district (now county board of education) are clothed with the authority to institute a suit against the trustees' former treasurer on promissory notes given by the treasurer to cover shortage in funds raised by the sale of bonds issued and sold for legal purposes. Craft v. Seawright, 56 Ga. App. 656, 193 S.E. 485 (1937).

**Cited in Williams v. Ragsdale,** 205 Ga. 274, 53 S.E.2d 339 (1949).

### OPINIONS OF THE ATTORNEY GENERAL

**Bonds may be validated after 1945 Constitution.** — If a local school district voted bonds prior to the adoption of the 1945 Constitution, the bonds may be validated thereafter and a bond tax levied. 1945-47 Op. Att'y Gen. p. 160.

**Local board must levy only upon property that was subject to taxation** in former district to pay the bonded indebtedness of the district and not upon the county as a whole. 1954-56 Op. Att'y Gen. p. 217.

It is the general rule that when one school system having a bonded indebtedness is merged with another school system, taxes levied for the purpose of paying off the bonded indebtedness may be levied only on property located within the territorial limits of the school system issuing the bonds as such territorial limits existed at the time the bonds were originally voted and issued. 1965-66 Op. Att'y Gen. No. 66-11.

**Upon bonds' retirement, surplus in retirement account transferred to general fund account.** — Upon retirement of school bonds, the surplus remaining in the debt retirement account becomes a part of the general school fund

and is properly transferred to the general fund account. 1965-66 Op. Att'y Gen. No. 65-116.

**Fund legally usable for other legitimate purposes.** — Funds raised by taxation to pay the principal and interest on bonds should be set aside by the officials of the political division and kept separate from other funds to be used for the sole purpose of paying the indebtedness and none other until the debts against the bonds have been fully liquidated, but neither the constitution nor this section contemplates that after the payment of the debts against the specific fund that then the fund could not be legally used for other legitimate purposes for which the authorities could levy a tax. 1945-47 Op. Att'y Gen. p. 163.

**Use insurance funds.** — County board of education may not use funds collected by a local school district from insurance on a destroyed school building to carry out a contract with an independent system for the transportation and education of children of the former school district but may use maintenance tax funds for that purpose. 1945-47 Op. Att'y Gen. p. 186.

### RESEARCH REFERENCES

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 557 et seq., 756 et seq., 787.

#### Subpart 2

#### Refunding Bonds

### 20-2-450. Subpart to govern refunding, retiring, or refinancing outstanding district bonds.

Where any school district or consolidated school district or any independent school district, in cases provided in this subpart, has outstanding schoolhouse bonds or shall hereafter issue, in accordance with the laws of this state, any such bonds, and it becomes necessary or advisable to refund, retire, or refinance such bonds, the refunding, retirement, or refinancing shall be done in accordance with the procedure and in the manner provided in this subpart. (Ga. L. 1937, p. 869, § 1.)



## RESEARCH REFERENCES

**ALR.** — Constitutionality of statutes authorizing or requiring the payment of, or assumption of legal liability for, tax anticipation warrants, 99 ALR 1039.

**20-2-451. Electoral approval required for refunding, retiring, or refinancing outstanding district bonds.**

The advisability or necessity of refunding, retiring, or refinancing such bonds shall be determined by the qualified voters of the school district concerned in an election to be held in such district in the manner provided in this Code section. (Ga. L. 1937, p. 869, § 2.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 113, 125. **C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 765 et seq., 773 et seq.

**20-2-452. Elections to approve refunding, retiring, or refinancing outstanding district bonds — Calling of election by county board.**

Should the county board of education for any school district or consolidated school district or board of education, or corresponding body, in any independent school district in which a local tax is now or may hereafter be levied for school purposes deem it necessary or advisable to refund, retire, or refinance any outstanding schoolhouse bonded indebtedness of such district, it shall, by written resolution, call an election to be held in the district by giving notice by publication thereof once a week for four weeks previous to the election in the newspaper in which the legal advertisements for the county are published, notifying the qualified voters that on the day named an election will be held to determine the question whether bonds shall be issued by the district for refunding, retiring, or refinancing outstanding schoolhouse bonds of such district. (Ga. L. 1937, p. 869, § 2.)

## RESEARCH REFERENCES

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 765 et seq., 773 et seq.

**20-2-453. Elections to approve refunding, retiring, or refinancing outstanding district bonds — Contents of election notice.**

The county board of education or board of education or corresponding body, as the case may be, shall specify in the election notice what amount of bonds are to be issued, for what purpose, what interest they

are to bear, how much principal and interest are to be paid annually, and when they are to be fully paid off. It shall also specify in the notice the amount of bonds and interest, if any, date of issue, rate of interest, and dates due of the outstanding schoolhouse bonds which are sought to be retired, refunded, or refinanced. (Ga. L. 1937, p. 869, § 2.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 130 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 757, 758, 761, 763.

**ALR.** — Statement regarding cost of proposed public improvement in ballot for special election in that regard, 117 ALR 892.

#### **20-2-454. Elections to approve refunding, retiring, or refinancing outstanding district bonds — Eligible voters; conduct of election; declaration of result.**

None but the qualified voters of the district concerned shall be permitted to vote in the election. The election shall be held and the result declared as provided in Title 21. (Ga. L. 1937, p. 869, § 2.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 147 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 765 et seq., 773 et seq.

#### **20-2-455. Elections to approve refunding, retiring, or refinancing outstanding district bonds — Referendum to call election.**

In addition to the manner provided in Code Sections 20-2-451 through 20-2-454 for calling such an election, should as many as one-fourth of the qualified voters of any such school district file a petition with the county board of education for any local tax school district or consolidated school district or the board of education or corresponding body in an independent school district, requesting that an election be called for the purpose of submitting the issue as to whether the schoolhouse bonded indebtedness of such district be refunded, retired, or refinanced, it shall become the duty of such board or body to call an election in the same manner as provided in Code Sections 20-2-451 through 20-2-454. (Ga. L. 1937, p. 869, § 3.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 114 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 761.

**20-2-456. Elections to approve refunding, retiring, or refinancing outstanding district bonds — Vote required; declaration of favorable result; issuance of refunding bonds.**

In the event that two-thirds of the votes cast at an election held as provided in Code Sections 20-2-451 through 20-2-455 are in favor of refunding "outstanding schoolhouse bonds" and such two-thirds are also a majority of all the voters qualified to vote in the election, then the officials as named in Code Sections 20-2-451 through 20-2-455 shall so declare the result; and such officials shall have the power and authority, after validation as provided in Code Section 20-2-470, to issue such refunding schoolhouse bonds for sale or exchange for the purpose of retiring the outstanding schoolhouse bonds in the district under all of the regulations now provided by law for school district bonds. (Ga. L. 1937, p. 869, § 5.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 153, 184 et seq.      **C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 756, 765 et seq., 773 et seq.

**20-2-457. District bonds — Tax levy to provide sinking fund to retire bonds.**

Where an election held in the manner provided in Code Sections 20-2-451 through 20-2-455 results favorably to the issue of such bonds, the county board of education or corresponding body of independent school districts, as the case may be, shall recommend, and the board of county commissioners or judge of the probate court or municipal tax levying authorities, as the case may be, shall annually levy upon the property subject to taxation in the school district in which the election was held, such tax as may be necessary to provide a sinking fund for the retirement of the bonds and for paying the principal thereof and the interest thereon, this to be in addition to the general tax for the maintenance of the schools of the district. (Ga. L. 1937, p. 869, § 5.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 386 et seq.      **C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 787, 799 et seq., 881 et seq.

**20-2-458. Local or consolidated school district bonds — Sale or exchange.**

Any refunding bonds of a local school district or consolidated school district shall, after validation, be turned over to the county board of



education to be sold or exchanged as provided in this subpart, and the county board is authorized to sell or exchange such bonds under all of the regulations now provided by law for the sale of school district bonds or as provided in this subpart. When such bonds are sold by the county board, the proceeds derived therefrom shall be held in trust by the county board only for the purposes provided in this subpart. When such bonds are exchanged by the county board, which is authorized to do so, such exchange shall be in accordance with Code Section 20-2-471. (Ga. L. 1937, p. 869, § 7.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1992, a comma was deleted following “do” and a comma was inserted following “so” in the last sentence.

RESEARCH REFERENCES

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| <b>Am. Jur. 2d.</b> — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 196, 225, 230, 236. | <b>C.J.S.</b> — 78A C.J.S., Schools and School Districts, § 779 et seq. |
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20-2-459. Independent school district bonds — Sale or exchange.

In independent school districts over which the county board has no jurisdiction, such refunding bonds, after they have been issued and validated, shall be turned over to the officials who under the law are now authorized to handle in any manner bonds issued by such independent school districts; and such officials are authorized to sell or exchange, in like manner as the county board, such refunding bonds for the purposes of and in accordance with this subpart. (Ga. L. 1937, p. 869, § 7.)

RESEARCH REFERENCES

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| <b>Am. Jur. 2d.</b> — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 196, 225, 230, 236. | <b>C.J.S.</b> — 78A C.J.S., Schools and School Districts, § 779 et seq. |
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20-2-460. District bonds — Sinking fund for holders failing or refusing to sell or exchange outstanding bonds.

Should any holder of an outstanding schoolhouse bond which is not due or which has not matured in accordance with the provisions thereof fail or refuse to sell or exchange such bond or bonds for refunding schoolhouse bonds issued in accordance with this subpart, it shall be the duty of the officials of the school district which issued such bond or bonds to set aside from the proceeds of the sale of the refunding schoolhouse bonds a sinking fund under all the regulations now provided by law for sinking funds for schoolhouse bonds for the purpose

of retiring such bonds when they mature and paying the interest accrued or to accrue thereon. (Ga. L. 1937, p. 869, § 14.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 355 et seq.      **C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 786, 787.

#### **20-2-461. Elections to approve refunding, retiring, or refinancing outstanding district bonds — Limit of one per year.**

No election as provided in this subpart shall be held in any one district more often than once a year. (Ga. L. 1937, p. 869, § 15.)

#### **20-2-462. County-wide bonds — Powers of counties as to refunding, refinancing, or retiring.**

All counties in which a local tax is now or may hereafter be levied for school purposes throughout the entire county or throughout the entire county except that part embraced within the incorporated limits of a municipality or municipalities are authorized to refund, refinance, or retire outstanding schoolhouse bonds of such territory in the same manner and under the same rules and regulations as provided in Code Sections 20-2-451 through 20-2-455, except that in elections for such territory, the manner of holding elections shall be as provided in Code Sections 20-2-463 through 20-2-466. (Ga. L. 1937, p. 869, § 4.)

#### **20-2-463. County-wide bonds — Petition to call election; call of election; county board to determine terms.**

When one-fourth of the registered qualified voters of the county or of the county outside the incorporated limits of a municipality or municipalities, as the case may be, shall file with the county board of education a petition asking for an election for the purpose of determining whether or not bonds shall be issued for the purpose of refunding, refinancing, or retiring outstanding school bonds of such territory, the required number of petitioners to be determined by the county board, it shall be the duty of the county board to fix the amount, denomination, rate of interest, and dates when due of the proposed bonds to refund, refinance, or retire outstanding schoolhouse bonds of such territory; and the county board shall also specify the amount, denomination, rate of interest, and dates when due of the outstanding school bonds which are sought to be refunded, retired, or refinanced and call such election in terms of law now provided or which may hereafter be provided for the county issue of bonds, except as otherwise provided in this Code section. (Ga. L. 1937, p. 869, § 4.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 114 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 761.

**20-2-464. County-wide bond elections — Notice.**

The county board shall order such election to be held at the various polling places throughout the county or throughout the territory to be affected, of which it shall give notice by publication thereof once a week for four weeks previous to the election in the newspaper in which the legal advertisements of the county are published. (Ga. L. 1937, p. 869, § 4.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 130 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 765 et seq., 773 et seq.

**20-2-465. County-wide bond elections — Eligible voters; conduct of election; declaration of result.**

None but registered qualified voters residing within the territory to be affected shall be permitted to vote in the election. The election shall be held and the result declared as provided in Title 21. (Ga. L. 1937, p. 869, § 4.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 147 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 765 et seq., 773 et seq.

**20-2-466. County-wide bonds — Vote required to approve; issuance, sale, or exchange.**

In the event that two-thirds of the votes cast at such election shall be in favor of refunding “outstanding schoolhouse bonds” and such two-thirds are also a majority of all the voters qualified to vote in such election, then the refunding schoolhouse bonds shall, after validation, as provided in Code Section 20-2-470 be issued, sold, or exchanged under all of the regulations now provided for the sale of county bonds under Code Section 20-2-430 or provided in this subpart for the sale or exchange of such refunding bonds. (Ga. L. 1937, p. 869, § 4.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 110, 184 et seq., 236 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 756, 779 et seq.



**20-2-467. County-wide bonds — Handling and use of proceeds.**

The proceeds from the sale or exchange of the refunding bonds shall be turned over to the county board of education in trust for any purposes provided in this subpart. (Ga. L. 1937, p. 869, § 4.)

**20-2-468. County-wide bonds — Tax levy to provide sinking fund to retire bonds.**

The county authorities, in levying and assessing taxes for the purpose of paying the interest and retiring and paying off the bonds shall, in the event that the entire county is not embraced within the area or territory in which the election is held, levy and assess such taxes only against the property located within the area or territory within which the election is held. For the purpose of taking care of and paying the principal and interest of such refunding schoolhouse bonds, the county board of education shall recommend and the board of county commissioners or judge of the probate court, as the case may be, shall levy upon the property subject to taxation in the entire county or in the area or territory within which the election is held, such tax as may be necessary to provide a sinking fund for the retirement of the bonds and for paying the principal thereof and the interest thereon, this to be in addition to the general tax for the maintenance of the schools of the county or territory. (Ga. L. 1937, p. 869, § 4; Ga. L. 1992, p. 6, § 20.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 241, 386 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 787, 799 et seq., 881 et seq.

**20-2-469. County-wide bonds — Paying off outstanding bonds; sinking fund for holders failing or refusing to sell, exchange, or surrender outstanding bonds.**

The manner of paying off the outstanding schoolhouse bonds with the proceeds of the sale of the refunding schoolhouse bonds, or exchange of bonds, and the sinking fund provided, in cases where holders of outstanding bonds fail or refuse to sell, exchange, or surrender them for cancellation, shall be the same as provided in this subpart for other school districts. (Ga. L. 1937, p. 869, § 4.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 355 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 787, 788.

**20-2-470. Validation of bonds.**

Before the schoolhouse refunding bonds provided in this subpart shall be issued, they shall first be validated in accordance with Part 1 of Article 2 of Chapter 82 of Title 36. (Ga. L. 1937, p. 869, § 6.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 349.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 784.

**20-2-471. Exchange or sale of bonds; use of proceeds.**

Bonds issued under this subpart may be exchanged for not less than an equal principal amount and accrued interest, if any, of indebtedness to be retired thereby, including indebtedness not yet due, if such indebtedness is then redeemable or if the holder thereof is willing to surrender the indebtedness for retirement, but otherwise shall be sold and the proceeds thereof shall be applied to the payment of such schoolhouse bonded indebtedness or accrued interest due or redeemable which may be so surrendered. (Ga. L. 1937, p. 869, § 8.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 230.

**20-2-472. Establishment of sinking fund for unsurrendered bonds.**

Should the holder of any outstanding schoolhouse bonds be unwilling to surrender them for retirement, either in exchange for refunding bonds in a principal amount equal to the principal and interest accrued on the bonds under the authority of this subpart or upon tender to him of the par value of the bond or bonds held by him, plus accrued interest thereon, then and in that event, when any of the refunding schoolhouse bonds are sold, a sufficient amount of the proceeds derived from the sale of the refunding bonds shall be set aside and shall constitute a sinking fund for the eventual retirement of any such bond or bonds and the payment of interest thereon in accordance with the provisions of such bonds when they mature or are surrendered for retirement. (Ga. L. 1937, p. 869, § 9.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 355 et seq.

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 787, 788.

**20-2-473. Limitations on issue and use of bonds and proceeds.**

The proceeds derived from the sale of any refunding schoolhouse bonds issued under the authority of this subpart shall be applied exclusively to the purposes provided in Code Sections 20-2-450 through 20-2-472. None of such refunding bonds shall be exchanged except for outstanding bonds for which they were issued to retire. In no event shall the refunding schoolhouse bonds so issued exceed in amount the previously existing total schoolhouse bond debt of the district issuing such bonds with interest thereon. (Ga. L. 1937, p. 869, § 10.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 88, 201, 236 et seq.      **C.J.S.** — 78 C.J.S., Schools and School Districts, § 756 et seq.

**20-2-474. Powers and duties of officials as to bonds, taxes, and sinking funds.**

Wherever in this subpart it is made the duty, without specific designation, of any official or officials to perform any duty with reference to the issuance, exchange, sale, or retirement of any bonds, such duty is imposed upon the same officials with respect to such duties as are now imposed upon the officers charged with the same duties under the laws of Georgia relating to bonds issued in the first instance. Such officers shall have the same authority and are charged with the same duties with respect to the investment of sinking funds and levying taxes to retire bonds and interest on bonds issued under this subpart as is now provided with respect to the levying of taxes to retire bonds and the creation and administration of sinking funds to retire the bonded indebtedness of any local school district, consolidated school district, or independent school district, where a local tax is levied for school purposes. (Ga. L. 1937, p. 869, § 11.)

**RESEARCH REFERENCES**

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 762.

**20-2-475. Interest on bonds.**

The interest rate on such refunding schoolhouse bonds shall in no event exceed, but may be less than, the interest rate on the bonds for which they were issued to refund. (Ga. L. 1937, p. 869, § 12.)



**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 236, 238.

**20-2-476. When subpart applicable to independent school districts.**

The provisions of this subpart for issuance of refunding schoolhouse bonds in the case of independent school districts shall apply only where the Act creating such school district, or as amended, authorizes such issuance. (Ga. L. 1937, p. 869, § 13.)

**20-2-477. Construction of subpart against impairment of outstanding bonds.**

This subpart shall not be construed to impair the obligation of any bond outstanding on March 31, 1937, or to prejudice the rights of any bondholder of an outstanding bond issued prior to that date. (Ga. L. 1937, p. 869, § 14.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 377, 378.      **C.J.S.** — 78 C.J.S., Schools and School Districts, § 788.

**Subpart 3****Withholding Appropriations to Pay Indebtedness****20-2-480. Notification of proposed issuance of bonded indebtedness; authorization to withhold appropriations to pay indebtedness.**

(a) Prior to the issuance of any bonded indebtedness, the governing body of any county school district or system, any independent school district or system, or any area school district or system may notify the State Board of Education of the proposed issuance of such indebtedness and authorize and direct the State Board of Education to withhold from such school district or system sufficient moneys from any state appropriation to which such school district or system may be entitled and apply so much as shall be necessary to the payment of the principal of and interest on such indebtedness then due.

(b) The notice and authorization referred to in subsection (a) of this Code section shall set forth the following information:

- (1) The proposed date of issuance of the bonded indebtedness;

(2) Each payment date with respect to such indebtedness and the principal of and interest on such indebtedness coming due on each such date; and

(3) The name and address of the financial institution serving as custodian, trustee, or paying agent for such indebtedness to whom any payment by the State Board of Education should be made. (Code 1981, § 20-2-480, enacted by Ga. L. 1991, p. 1579, § 2.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1991, “Code section” was substituted for “Code Section” in subsection (b).

PART 4

TAXATION

**Editor’s notes.** — Former Chapter 32-11 of Code 1933, from which this part originated, allowed counties to maintain public schools by local taxation.

JUDICIAL DECISIONS

**General school fund of county was obtained by the method set out in former Code 1933, Ch. 32-11** and represented the voluntary action of the people of the local districts and belonged exclusively to those districts. *Downer v. Stevens*, 194 Ga. 598, 22 S.E.2d 139 (1942).

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**Cited in Davis v. Board of Educ.**, 203 Ga. 44, 45 S.E.2d 429 (1947).

OPINIONS OF THE ATTORNEY GENERAL

**When city discontinued independent system prior to 1945.** — If a city’s discontinuance of the city’s independent school system was accomplished under the provisions of this part prior to 1945, then the city would not have an existing independent school system as contemplated by Ga. Const. 1945, Art. VIII, Sec. VII, Para. I (see Ga. Const. 1983, Art. VIII, Sec. V, Para. I), and thus would not be able to reactivate, maintain, or preserve a city system. 1950-51 Op. Att’y Gen. p. 49.

RESEARCH REFERENCES

**ALR.** — What is common or public school within contemplation of constitutional or statutory provisions, 113 ALR 697.

Discretion of administrative officers as to changing boundaries of school district, 135 ALR 1096.

20-2-490. Municipalities authorized to levy school taxes.

Authority is given by the Constitution of Georgia to municipalities now authorized by law to operate independent school systems to maintain public schools in their respective limits by local taxation. (Ga. L. 1919, p. 288, § 127; Code 1933, § 32-1111; Ga. L. 1946, p. 206, § 14.)

**Cross references.** — Authority of municipal corporations to maintain existing independent school systems, Ga. Const.

1983, Art. VIII, Sec. V, Para. I. Municipal tax for independent school systems, § 48-5-405.

### JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1551 (130, 134, and 153), which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Section is interpreted in the light of fundamental restriction upon taxation** imposed by the constitution of this state and will not be given a construction which violates the constitutional provision. *Penick v. Foster*, 129 Ga. 217, 58 S.E. 773, 12 L.R.A. (n.s.) 1159, 12 Ann. Cas. 346 (1907); *Almand v. Board of Educ.*, 161 Ga. 911, 131 S.E. 897 (1926) (decided under former Code 1910, § 1551(130), (134) and (153)).

**Levying tax within independent school district for support of county schools.** — This section does not authorize county authorities to levy a tax upon taxable property within an independent school district existing in a city for the support of the public schools of the county under the control of the county board of

education. *Almand v. Board of Educ.*, 161 Ga. 911, 131 S.E. 897 (1926) (decided under former Code 1910, § 1551(130), (134) and (153)).

**Local tax election will be held void if notice was not in compliance with section.** *Dooly v. Mayor of Fairmount*, 146 Ga. 689, 92 S.E. 209 (1917) (decided under former Code 1910, § 1551(130), (134) and (153)).

**Persons entitled to vote in bond election.** — No person is lawfully entitled to vote in a school district bond election held under this section whose name does not appear on any list of the county registrars filed with the clerk of the superior court of the county showing the names of the registered voters of the county entitled to vote. *Chapman v. Sumner Consol. Sch. Dist.*, 152 Ga. 450, 109 S.E. 129 (1921); *Trustees of St. Clair Sch. Dist. No. 10 v. Broxton*, 38 Ga. App. 65, 142 S.E. 575 (1928) (decided under former Code 1910, § 1551(130), (134) and (153)).

**Cited in** *Board of Educ. v. Bates*, 114 Ga. App. 343, 151 S.E.2d 524 (1966); *McDaniel v. Thomas*, 248 Ga. 632, 285 S.E.2d 156 (1981).

### RESEARCH REFERENCES

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 78, 79.

### 20-2-491. Performance audit on capital outlay projects funded by sales tax.

(a) When a sales tax for educational purposes is imposed for capital outlay projects as provided in Part 2 of Article 3 of Chapter 8 of Title 48 and such tax generates or is reasonably anticipated to generate annualized proceeds of \$5 million per year or more, the expenditure of tax proceeds shall be subject to an ongoing performance audit or performance review as provided in this Code section; but this Code section shall not apply if such tax generates annualized proceeds below \$5 million.

(b) Each local board of education expending tax proceeds for capital outlay projects shall provide for a continuing performance audit or



performance review of the expenditure of such funds. The local board of education shall contract with an outside auditor, consultant, or other provider for such performance audit or performance review. The performance audit or performance review contract shall:

(1) Include a goal of ensuring to the maximum extent possible that the tax funds are expended efficiently and economically, so as to secure to the expending school district the maximum possible benefit from the tax dollars collected;

(2) Provide for the issuance of periodic public reports, not less often than once annually, with respect to the extent to which expenditures are meeting the goal specified in paragraph (1) of this subsection; and

(3) Provide for the issuance of periodic public recommendations, not less often than once annually, for improvements in meeting the goal specified in paragraph (1) of this subsection.

(c) The auditor, consultant, or other provider to carry out the performance audit or performance review shall be selected through a public request for proposals process. The cost of the performance audit or performance review may be paid from the proceeds of the sales tax for educational purposes or any other available funds of the local school system.

(d) The performance audit or review shall be required when the sales tax for educational purposes is imposed in whole or in part for capital outlay projects but shall not be required when the sales tax for educational purposes is imposed for the sole purpose of retirement of previously incurred general obligation debt.

(e) The requirements of this Code section shall apply with respect to any sales tax for educational purposes which is in effect on July 1, 2003, as well as any sales tax for educational purposes imposed or reimposed on or after that date. (Code 1981, § 20-2-491, enacted by Ga. L. 2003, p. 185, § 6.)

**Law reviews.** — For note on the 2003 enactment of this Code section, see 20 Ga. St. U. L. Rev. 147 (2003).

## ARTICLE 10

### CONTRACTS AND PURCHASES BY PUBLIC SCHOOLS

**Cross references.** — State purchasing generally, § 50-5-50 et seq.

**20-2-500. Contracts for purchases authorized of certain supplies, materials, equipment, or agricultural products to give preference to in-state manufacturers or producers; purchases over \$100,000.00; vendor preferences.**

(a)(1) Local boards of education shall provide that contracts for or purchases of supplies, materials, equipment, or agricultural products, including but not limited to school buses but not including instructional materials or beverages for immediate consumption, for public elementary and secondary schools supported in whole or in part from public funds shall give preference as far as may be reasonable and practicable to such supplies, materials, equipment, and agricultural products as may be manufactured or produced in this state. Such preference shall not sacrifice quality.

(2) Local boards of education shall provide that, in determining whether such a preference is reasonable in any case where the value of a contract for or purchase of such supplies, materials, equipment, or agricultural products exceeds \$100,000.00, the local school district shall consider, among other factors, information submitted by the bidder which may include the bidder's estimate of the multiplier effect on gross state domestic product and the effect on public revenues of the state and the effect on public revenues of political subdivisions resulting from acceptance of a bid or offer to sell Georgia manufactured or produced goods as opposed to out-of-state manufactured or produced goods. Any such estimates shall be in writing. No local school district shall divide a contract or purchase which exceeds \$100,000.00 for the purpose of avoiding the requirements of this paragraph.

(b) Vendors resident in the State of Georgia are to be granted the same preference over vendors resident in another state in the same manner, on the same basis, and to the same extent that preference is granted in awarding bids for the same goods or services by such other state to vendors resident therein over vendors resident in the State of Georgia.

(c) Nothing in this Code section shall negate the requirements of Code Section 50-5-73. (Ga. L. 1968, p. 335, § 1; Ga. L. 2009, p. 204, § 1/SB 44; Ga. L. 2010, p. 308, § 3/SB 447; Ga. L. 2012, p. 358, § 25/HB 706.)

**The 2010 amendment**, effective July 1, 2010, added subsection (c), and redesignated former subsection (c) as present subsection (d). See the editor's note for applicability.

**The 2012 amendment**, effective July

1, 2012, deleted former subsection (a), which read: "The State Board of Education is authorized to promulgate rules and regulations to regulate contracts or purchases which involve the aggregate sum of \$100.00 or more for or on behalf of stu-

dents of any public elementary or secondary school supported in whole or in part from public funds.”; redesignated former subsections (b) through (d) as subsections (a) through (c), respectively; substituted “Local boards of education shall provide that contracts” for “Such rules shall provide that such contracts” at the beginning of paragraph (a)(1); and substituted “Local boards of education” for “Such rules” at the beginning of paragraph (a)(2).

**Editor’s notes.** — Ga. L. 2009, p. 204,

§ 6/SB 44, not codified by the General Assembly, provides, in part, that this Act shall not be applied to impair an obligation of any contract entered into prior to July 1, 2009.

Ga. L. 2010, p. 308, § 4/SB 447, not codified by the General Assembly, provides that this Act shall apply to contracts which are first advertised or otherwise given public notice on or after July 1, 2010.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 28 et seq., 83, 135 et seq.

**C.J.S.** — 78 C.J.S., Schools and School

Districts, §§ 235, 236, 500 et seq., 560 et seq. 78A C.J.S., Schools and School Districts, §§ 699, 703, 704, 726, 728 et seq.

## 20-2-501 through 20-2-503.

Reserved. Repealed by Ga. L. 2012, p. 358, §§ 26-28/HB 706, effective July 1, 2012.

**Editor’s notes.** — These Code sections were based on Ga. L. 1952, p. 334, § 1; Ga. L. 1968, p. 335, §§ 2-3.

## 20-2-504. Authority to contract for pupil transportation.

County, independent, and area school systems shall have authority to contract for the transportation of pupils in accordance with the provisions of Code Section 20-2-506. (Ga. L. 1919, p. 288, § 102; Code 1933, § 32-928; Ga. L. 1947, p. 1142, § 1; Ga. L. 1990, p. 1035, § 1.)

**Cross references.** — Power to enter into transportation contracts, § 20-2-1071.

## JUDICIAL DECISIONS

**Section is not applicable to contracts made before the law’s passage.**

Board of Educ. v. Southern Mich. Nat’l Bank, 184 Ga. 641, 192 S.E. 382 (1937).

## 20-2-505. Member prohibited from selling school supplies or equipment to county board; penalty.

(a) No member of any county board of education in this state shall sell to any county board any supplies or equipment used, consumed, or necessary in the operation of any public school in this state unless there



are fewer than three sources for such supplies or equipment within the county; provided, however, that any purchase pursuant to this subsection for supplies or equipment that is equal to or greater than \$10,000.00 shall be approved by a majority of the members of the board in an open public meeting.

(b) Any member of any county board violating subsection (a) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1943, p. 273, §§ 2, 3; Ga. L. 2008, p. 143, § 1/HB 602.)

### OPINIONS OF THE ATTORNEY GENERAL

**Section not applicable to sale or procurement of "insurance."** — This section is limited in the statute's application to the sale of "supplies and equipment" to schools or school systems and has been construed as being not applicable to the sale or procurement of "insurance" on school property. 1960-61 Op. Att'y Gen. p. 158 (see O.C.G.A. § 20-2-505).

**Section applicable to professional services.** — Local school board members may not provide professional services for compensation to the school systems the members represent. 1997 Op. Att'y Gen. No. 97-12.

**Section not applicable to subcontractors on school board project.** — County school board members who are subcontractors on a school board project are not generally subject to criminal prosecution under O.C.G.A. § 20-2-505. 1997 Op. Att'y Gen. No. 97-29.

**Common-law rule prohibits board member from selling fire insurance to county board.** — Words "supplies or equipment" under this section would not cover the sale of fire insurance; therefore, this section would not apply to the sale of fire insurance to a county board of education by a member of the board; however, Georgia has always followed the common-law rule that no public agent may take a profit out of public business entrusted to the agent's care and, thus, a member of a local school board may not sell fire insurance to a county board of education. 1954-56 Op. Att'y Gen. p. 192 (see O.C.G.A. § 20-2-505).

**Trustee of a local school does not come within the provision of this section** in that a trustee acts only in an advisory capacity. 1952-53 Op. Att'y Gen. p. 351 (see O.C.G.A. § 20-2-505).

**Board cannot do business with entity owned by board employee.** — It is illegal for a county board of education to do business with a corporation or partnership which is partly owned by a member of the board. 1954-56 Op. Att'y Gen. p. 186.

It is illegal for a county board of education to do business with a private enterprise, corporation, or partnership either partly or wholly owned by a member of the county board of education. 1960-61 Op. Att'y Gen. p. 148.

**Legality of sales to county board, one of whose members is stockholder** in the corporation making the sale is dependent upon the amount of ownership the board member has in the corporation. 1952-53 Op. Att'y Gen. p. 65.

**Member of county board cannot sell gasoline to board of which the seller is a member.** 1954-56 Op. Att'y Gen. p. 189.

**Board may not purchase gasoline from corporation where board member is a shareholder in the corporation.** 1954-56 Op. Att'y Gen. p. 188.

**Board may do business with firm employing board member.** — It is legal for a local board of education to do business with a firm when a board member is a salaried (no financial interest in the firm) employee of the firm provided, however, that the board member does not make the sale and there is no evidence that the amount of the member's compensation as an employee of the firm was or is dependent in any way upon the making of the contract. 1958-59 Op. Att'y Gen. p. 102.

**Board may make purchase from estate administered by board member.** — Board of education, though prohibited

from doing business with an enterprise in which a board member has a personal financial interest, may purchase milk from a dairy which is part of an estate of which the board member is the administrator but is otherwise a disinterested person without direct and substantial interest in the estate. 1962 Op. Att'y Gen. p. 149.

**Member of a county board may not provide services for buses owned by the board.** 1960-61 Op. Att'y Gen. p. 147.

**Prohibition against selling services**

**not applicable for essential public services.** — Policy of this section extends the prohibition against selling supplies and equipment to services as well; this prohibition does not apply in the case of ownership of public utilities, such as telephone companies, where the service is essential, where it cannot be obtained from another source, and where rates are regulated by an agency such as the Public Service Commission. 1970 Op. Att'y Gen. No. U70-138 (see O.C.G.A. § 20-2-505).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 29.

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 96 et seq., 564, 614.

#### **20-2-505.1. Board transacting business with bank or similar institution in which member has interest.**

A local board of education having any member thereof who is an employee, stockholder, director, or officer of a bank or similar financial institution shall nevertheless be authorized to transact business with such bank or financial institution without the board or member thereby incurring any criminal liability therefor, as long as such member owns less than 30 percent of the stock or other ownership interest in such bank or financial institution. (Code 1981, § 20-2-505.1, enacted by Ga. L. 1993, p. 1687, § 1.)

#### **20-2-506. Definitions; authority to enter into multiyear lease, purchase, or lease purchase contracts.**

(a) As used in this Code section, the term:

(1) "Energy cost savings measure" means a facility alteration designed to reduce energy consumption or operating costs and may include one or more of the following:

(A) Insulating the building structure or structures within the building, including caulking or weather-stripping;

(B) Installing storm windows or doors, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, or other window or door systems designed to reduce energy consumption;

(C) Installing automated or computerized energy control systems;

(D) Modifying or replacing heating, ventilating, or air-conditioning systems;

(E) Replacing or modifying lighting fixtures to increase the energy efficiency of the lighting system;

(F) Improving indoor air quality to conform to the applicable state or local building code requirements;

(G) Installing energy recovery systems;

(H) Installing cogeneration systems that produce steam or forms of energy such as heat and electricity for use primarily within a building or complex of buildings; and

(I) Life safety measures that provide long-term operating cost reductions and are in compliance with state and local codes, and building operation programs that reduce operating costs.

(2) "Guaranteed energy saving contract" means a contract for the implementation of one or more energy cost savings measures providing that all payments except obligations on termination of the contract before its expiration are to be made over time and the energy cost savings are guaranteed to the extent necessary to make payments for the contract.

(b) Except as otherwise provided in this Code section, each county, independent, or area school system in this state shall be authorized to enter into multiyear lease, purchase, or lease purchase contracts of all kinds for the acquisition of goods, materials, real and personal property, services, and supplies, provided that any such contract shall contain provisions for the following:

(1) The contract shall terminate absolutely and without further obligation on the part of the school system at the close of the calendar year in which it was executed and at the close of each succeeding calendar year for which it may be renewed as provided in this Code section;

(2) The contract may provide for automatic renewal unless positive action is taken by the school system to terminate such contract, and the nature of such action shall be determined by the school system and specified in the contract;

(3) The contract shall state the total obligation of the school system for the calendar year of execution and shall further state the total obligation which will be incurred in each calendar year renewal term, if renewed;

(4) The total combined annual payments for contracts under this Code section and contracts of such school system under Article IX,



Section III, Paragraph I of the Constitution in any calendar year, excluding guaranteed energy savings contracts, shall not exceed an amount equal to 7.5 percent of the total local revenue collected for maintenance and operation of the school system in the most recently completed fiscal year; provided, however, that the foregoing limitation shall not apply to contracts with other public educational entities, including school systems in this state, for the education of students; and

(5) For each guaranteed energy savings contract, a school system shall document the historical energy cost of each structure affected for a period of at least one year prior to the date of the contract and shall document the monthly energy cost and monthly energy savings of each affected structure for the life of the contract.

(c) In addition to the provisions enumerated in subsection (b) of this Code section, any contract authorized by this Code section may include:

(1) A provision which requires that the contract will terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligations of the school system under the contract; or

(2) Any other provision reasonably necessary to protect the interests of the school system.

(d) Any contract developed under this Code section containing the provisions enumerated in subsection (b) of this Code section shall be deemed to obligate the school system only for those sums payable during the calendar year of execution or, in the event of a renewal by the school system, for those sums payable in the individual calendar year renewal term.

(e) No contract developed and executed pursuant to this Code section shall be deemed to create a debt of the school system for the payment of any sum beyond the calendar year of execution or, in the event of a renewal, beyond the calendar year of such renewal.

(f) Any such contract may provide for the payment by the school system of interest or the allocation of a portion of the contract payment to interest, provided that the contract is in compliance with this Code section.

(g) When any local board of education on or after July 1, 1990, submits to the electors of its local school district the proposed issuance of any bonded debt and such proposal is defeated by the electors, that school system shall be prohibited for a period of four calendar years immediately following such election from entering into any multiyear contract for the lease, purchase, or lease purchase of any goods, materials, real or personal property, services, or supplies which are the

same as or substantially similar to items which were proposed to be funded through such proposed issuance of bonded debt.

(h) Nothing in this Code section shall restrict school systems from executing reasonable contracts arising out of their proprietary functions.

(i) Each school system in this state is authorized to accept the title to property subject to a contract for lease purchase or installment purchase and is authorized to transfer title back to the vendor in the name of the school district in the event that the contract is not fully consummated.

(j) Any contract developed under this Code section shall comply with the applicable provisions of the Official Code of Georgia Annotated, and regulations thereunder, relating to state allocated capital outlay funds and entitlements. (Code 1981, § 20-2-506, enacted by Ga. L. 1990, p. 1035, § 2; Ga. L. 1996, p. 1075, § 1; Ga. L. 1997, p. 919, § 1; Ga. L. 1998, p. 128, § 20.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1990, a comma was inserted following “1990” in subsection (f) (now subsection (g)).

Pursuant to Code Section 28-9-5, in 1997, a semicolon was substituted for a period at the end of paragraph (b)(4).

**Editor’s notes.** — Ga. L. 1996, p. 1075, § 2, not codified by the General Assembly, provides: “This Act shall become effective July 1, 1996. Nothing in this Act shall be construed to invalidate or impair any contract entered into prior to said effective date.”

## JUDICIAL DECISIONS

**Editor’s note.** — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 32-928, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**“Appropriation” means funds received from all sources** for the support of the public schools for the current fiscal year. *Lewis v. Board of Educ.*, 183 Ga. 687, 189 S.E. 233 (1936) (decided under former Code 1933, § 32-928).

**Subsections (b) and (h) construed.** — Construing O.C.G.A. § 20-2-506(h) according to the statute’s plain terms, it follows that the validity and execution of a reasonable proprietary contract is not restricted by the provisions of subsection (b). *Greene County Sch. Dist. v. Circle Y Constr., Inc.*, 308 Ga. App. 837, 708 S.E.2d 692 (2011).

**If indebtedness created subsequent**

**to estimate of sums due.** — If an alleged indebtedness was created subsequently to the estimate of sums due and unpaid forwarded by the county educational authorities to the State School Superintendent and was in excess of the funds appropriated for the current year, the obligation was void. *Hicks v. Groves*, 177 Ga. 574, 170 S.E. 877 (1933), *aff’d*, 179 Ga. 464, 176 S.E. 26 (1934) (decided under former Code 1933, § 32-928).

**When payment of indebtedness not provided for in estimated budget.** — When the payment of the indebtedness due to the petitioner by the county board of education was not provided for as an estimated expenditure from the funds included in the budget filed by the county board with the State Board of Education, the petitioner was not legally entitled to compel payment out of the funds included in the budget, and equity would not impound the funds for the purpose of com-

selling payment. *Lewis v. Board of Educ.*, 183 Ga. 687, 189 S.E. 233 (1936) (decided under former Code 1933, § 32-928).

**Proprietary functions.** — Trial court did not err in denying a school district's motion to dismiss a contractor's breach of contract action because the trial court was authorized to conclude that the parties' multi-year contract was not void since the allegations of the complaint indicated that the contract pertained to projects that the county's voters had approved or were otherwise within the school district's proprietary functions; the school district's deci-

sion to engage in the construction projects could have been governmental, but the district's solicitation of private assistance from the contractor to perform the subsequent steps necessary to complete the projects was proprietary in nature, and to the extent that the contract was within the school district's proprietary function, the exception under O.C.G.A. § 20-2-506(h) applied and compliance with the provision of O.C.G.A. § 20-2-506(b) was not required. *Greene County Sch. Dist. v. Circle Y Constr., Inc.*, 308 Ga. App. 837, 708 S.E.2d 692 (2011).

### OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarities of the statutory provisions, opinions under former Code 1933, § 32-928, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Section was designed to prohibit a county board from binding the board's successors.** 1948-49 Op. Att'y Gen. p. 101 (decided under former Code 1933, § 32-928).

**Application of O.C.G.A. § 20-2-506(b)(4).** — O.C.G.A. § 20-2-506(b)(4) did not apply to a specific contract between a city and a city building authority with respect to outstanding revenue bonds of the building authority. 2002 Op. Att'y Gen. No. U2002-2.

**Contract extending beyond fiscal year.** — O.C.G.A. § 20-2-506 does not prevent a local board of education from legally entering into a contract to employ a school superintendent for a period which extends beyond the current fiscal year so long as that contract, along with all other obligations of the system for that year, does not exceed total appropriations for the current fiscal year; however, unless specifically permitted by local law, such a contract may be prevented by the principle established in *Williams v. City Council*, 68 Ga. 816 (1882), which held that a municipal corporation may not by ordinance bind itself and the municipality's successors to a given line of policy, though the municipality may bind itself and the municipality's successors by any contract which the municipality has the right to

make under the municipality's charter. 1986 Op. Att'y Gen. No. U86-14.

**In the absence of local law, the term of a teacher's contract** is limited to a single year as a matter of law. 1963-65 Op. Att'y Gen. p. 756 (decided under former Code 1933, § 32-928).

**Board has no responsibilities or obligations after contract fulfilled.** — County school board has no further responsibilities or obligations toward an employee after the board has fulfilled all of the terms of the employee's one-year contract. 1963-65 Op. Att'y Gen. p. 756 (decided under former Code 1933, § 32-928).

**Board not authorized to sell and buy back recently erected school building.** — County board of education is not authorized to sell a recently erected school building and at the same time buy back the same building, to be paid for over a period of years, to obtain funds with which to equip the building and other buildings in the school system. 1952-53 Op. Att'y Gen. p. 72 (decided under former Code 1933, § 32-928).

**Lease agreement whereunder board leases buses** for single year is not on the agreement's face illegal merely because the agreement also gives the school board three one-year renewal options coupled with a purchase option exercisable at the end of the final renewal period; such an agreement might be subject to attack, however, if the yearly "rental payments" are so grossly in excess of what reasonably could be considered to be the "fair rental value" of the buses as to



lead to a conclusion that the transaction, while disguised as a lease plus purchase option, is essentially a "conditional sale."

1965-66 Op. Att'y Gen. No. 65-33 (decided under former Code 1933, § 32-928).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 136 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 703, 704, 712 et seq.

## ARTICLE 11

### PUBLIC SCHOOL PROPERTY AND FACILITIES

**Administrative rules and regulations.** — School facilities and capital outlay management, Official Compilation of

the Rules and Regulations of the State of Georgia, Georgia Department of Education, Chapter 160-5-4.

#### PART 1

#### POWERS OF LOCAL BOARDS

### **20-2-520. Acquiring and disposing of school sites; building, repairing, renting, and furnishing schoolhouses.**

(a) The county boards of education shall have the power to purchase, lease, or rent school sites; build, repair, or rent schoolhouses; purchase maps, globes, and school furniture; and make all arrangements necessary to the efficient operation of the schools. Such county boards are invested with the title, care, and custody of all schoolhouses or other property, with the power to control such property in such manner as they think will best serve the interests of the public schools; and when, in the opinion of the county board, any schoolhouse site has become unnecessary or inconvenient, they may sell it in the name of the county board; and the conveyance for any such sale shall be executed by the president or secretary of the county board, according to the order of the county board. Such county boards shall have the power to receive any gift, grant, donation, or devise made for the use of the public schools within the respective counties; and all conveyances of real estate which may be made to such a county board shall vest the property in such county board and its successors in office. Such county board may provide for the building of schoolhouses by a tax on all property located in the county and outside the territorial limits of any independent school system. The construction of all public school buildings must be approved by the county school superintendent and county board and must be according to the plans furnished by the county school authorities and the State Board of Education. All public school construction contracts in excess of \$100,000.00 shall be publicly advertised and awarded through an open and competitive process, regardless of the funding source.

(b) If a schoolhouse site has become unnecessary or inconvenient, as provided by subsection (a) of this Code section, and if the state or the county or municipality whose territorial boundaries include such schoolhouse site needs such site for any governmental purpose, then the county board may sell or convey such schoolhouse site to the state or such county or municipality for such consideration and subject to such conditions, if any, as may be determined by such county board.

(c) In addition to school property and facilities provided for in subsection (a) of this Code section, a county board of education or an area board of education is authorized to expend educational funds available to it for the purpose of acquiring, improving, and selling real or personal property in connection with its secondary and postsecondary vocational education curricula or program. (Ga. L. 1919, p. 288, § 84; Code 1933, § 32-909; Ga. L. 1937, p. 882, § 18; Ga. L. 1946, p. 206, § 1; Ga. L. 1961, p. 35, § 9; Ga. L. 1962, p. 654, § 1; Ga. L. 1979, p. 657, § 1; Ga. L. 1984, p. 373, § 1; Ga. L. 1985, p. 149, § 20; Ga. L. 1999, p. 1236, § 1; Ga. L. 2010, p. 746, § 0.5/HB 703.)

**The 2010 amendment**, effective July 1, 2010, inserted "the state or" in two places in subsection (b).

**Cross references.** — Authority of local boards of education to acquire property for conveyance to board of regents, § 20-3-59.

**Editor's notes.** — Ga. L. 1999, p. 1236, § 2, not codified by the General Assembly,

provided that the 1999 amendment was applicable to contracts entered into on or after May 3, 1999.

**Law reviews.** — For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

## JUDICIAL DECISIONS

**Editor's note.** — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1551(89), which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Section gives to the county boards of education complete ownership of county school property** with the right to buy and sell the property. *Bailey v. County Bd. of Educ.*, 213 Ga. 308, 99 S.E.2d 124 (1957) (see O.C.G.A. § 20-2-520).

**All property held by trustees legally passed to county board.** — By the Act of 1946 (Ga. L. 1946, p. 206), all property held in any capacity for school purposes by the trustees of any local school district passed by operation of law to and became vested in the county board

of education. *Duffee v. Jones*, 208 Ga. 639, 68 S.E.2d 699 (1952).

**In making sales of school property, the board is vested with broad discretion** which will not be controlled unless the discretion is manifestly abused. *Veal v. Smith*, 221 Ga. 712, 146 S.E.2d 751 (1966).

**Board may sell at private sale any property for which the board has absolute title.** — County board of education has the power to and may sell at private sale any schoolhouse property for which the board has absolute title when the board finds and by resolution declares that the property is not necessary or convenient for school purposes. But the board has no power or authority under this or any other provision to sell any property which has been conveyed to and accepted by the board, or the board's predecessor in

title, in trust for educational purposes, except at public sale after proper leave to sell has been obtained from the superior court. *Duffee v. Jones*, 208 Ga. 639, 68 S.E.2d 699 (1952).

**Board cannot control land given by private parties for specific purpose.** — This section confers no authority upon the board of education of the county to control or to sell and dispose of land which is given by private parties for a specific purpose. *Dominy v. Stanley*, 162 Ga. 211, 133 S.E. 245 (1926) (decided under former Code 1910, § 1551 (89)).

**After bonds issued and sold, board may select school site.** — After a city issued and sold bonds to a given amount for the purpose of erecting a new school building, the board of education of that city had authority to select the site for and to construct the building. *Chipstead v. Oliver*, 137 Ga. 483, 73 S.E. 576 (1912) (decided under former Code 1910, § 1551 (89)).

**Board may possess, control, and expend fund raised.** — Authority to select a school site, in the absence of anything to the contrary in the charter of the city, carries with it, by necessary implication, the power in the board to possess, control, and expend the fund raised by the sale of bonds in the performance of the board's public duty in erecting the building. *City of Blakely v. Singletary*, 138 Ga. 632, 75 S.E. 1054 (1912) (decided under former Code 1910, § 1551 (89)).

**Board has income sources to satisfy judgment and authorized to pay back salary award.** — Even though a majority of funds controlled by a school board emanates from the state, the board has sufficient sources of income to satisfy a judgment, or the ability to raise it, as well as the authority to pay an award of back salary without transgressing state law. *Davis v. Griffin-Spalding County Bd. of Educ.*, 445 F. Supp. 1048 (N.D. Ga. 1975).

**Board may incur obligation even though contract not completed before members' terms end.** — Board of education may incur a lawful obligation to pay for the purchase or construction of a facility when sufficient funds are on hand for that purpose even though the construction contract may not be fully com-

pleted before the end of the term of some or all of the members of that body. *Concerned School Patrons & Taxpayers v. Ware County Bd. of Educ.*, 245 Ga. 202, 263 S.E.2d 925 (1980).

**Board may construct physical educational facilities.** — Boards of education have lawful authority to provide for and construct physical education facilities which may incidentally include a field house or related athletic facility. *Concerned School Patrons & Taxpayers v. Ware County Bd. of Educ.*, 245 Ga. 202, 263 S.E.2d 925 (1980).

**School districts may contract with, and pay, county for garbage disposal service.** — School districts have the authority and obligation to contract with, and pay for the service provided by, the county in disposing of garbage resulting from the operation of the school lunch program. *Fletcher v. Russell*, 151 Ga. App. 229, 259 S.E.2d 212, rev'd on other grounds, 244 Ga. 854, 262 S.E.2d 138 (1979).

**Board empowered to close school term prior to time originally provided for.** — County board has power, after having specified the duration of a particular school term, to pass a resolution, after the expiration of six months of the term, closing the term prior to the time originally provided for. *Board of Educ. v. Thurmond*, 162 Ga. 58, 132 S.E. 427 (1926) (decided under former Code 1910, § 1551 (89)).

**County commissioners not empowered to bind education board to operate schools for any particular time.** — Board of commissioners of a county has no power to contract with the county board of education as to bind the board of education to operate the schools for any particular time, and the board of education will not be bound by any promise to the board of county commissioners in regard to the length of time the board will operate the public schools at any term. *Board of Educ. v. Thurmond*, 162 Ga. 58, 132 S.E. 427 (1926) (decided under former Code 1910, § 1551 (89)).

**Board has exclusive power to employ teachers.** — County board is empowered to employ teachers in the school under the board's jurisdiction, and this



duty is exclusively vested in the board. *Orr v. Riley*, 160 Ga. 480, 128 S.E. 669 (1925) (decided under former Code 1910, § 1551 (89)).

**Equity will not entertain jurisdiction of controversy as to location of site of school building**, but will remand the parties to the parties' legal remedy. *Meadows v. Board of Educ.*, 136 Ga. 153, 71 S.E. 146 (1911); *Edge v. Garrett*, 138 Ga. 93, 74 S.E. 758 (1912) (decided under former Code 1910, § 1551 (89)).

**Cited** in *Usher v. State*, 54 Ga. App. 345, 187 S.E. 881 (1936); *Weeks v. State*, 58 Ga. App. 440, 198 S.E. 809 (1938);

*Smith v. Jefferson County*, 201 Ga. 674, 40 S.E.2d 773 (1946); *Robinson v. State*, 82 Ga. App. 584, 61 S.E.2d 773 (1950); *Parker v. Board of Educ.*, 209 Ga. 5, 70 S.E.2d 369 (1952); *Moore v. Wells*, 212 Ga. 446, 93 S.E.2d 731 (1956); *Ingram v. Doss*, 217 Ga. 645, 124 S.E.2d 87 (1962); *Oconee County v. Rowland*, 107 Ga. App. 108, 129 S.E.2d 373 (1962); *Grimes v. Clark*, 226 Ga. 195, 173 S.E.2d 686 (1970); *Ken Stanton Music, Inc. v. Board of Educ.*, 227 Ga. 393, 181 S.E.2d 67 (1971); *Wright v. Baker County Bd. of Educ.*, 501 F.2d 131 (5th Cir. 1974).

## OPINIONS OF THE ATTORNEY GENERAL

### ANALYSIS

#### GENERAL CONSIDERATION

##### SCHOOL PROPERTY

##### ATTENDANCE AND TRANSPORTATION

### General Consideration

**Section constitutes plenary grant of authority.** — It is clear that this section was intended by the legislature to constitute a plenary grant of authority. 1948-49 Op. Att'y Gen. p. 101 (see O.C.G.A. § 20-2-520).

**Power to manage and control county school systems.** — County school superintendent is obliged to comply with and carry out all rules, regulations, and instructions of the county board of education. 1974 Op. Att'y Gen. No. U74-65.

**State superintendent authorized to deal with local board when county superintendent suspended.** — This section is broad enough to authorize the State School Superintendent to deal with the local board of education and the president of the local board in instances when the county school superintendent is suspended, or when the title to the office is in controversy. 1945-47 Op. Att'y Gen. p. 206 (see O.C.G.A. § 20-2-520).

**School boards excluded from incorporating or being members of nonprofit corporations.** — While county boards of education are vested with broad powers respecting the management and control of the school systems the boards administer, the general laws pertaining to

the creation of nonprofit corporations appear to exclude the possibility of school boards incorporating or being members of nonprofit corporations as a county board of education is not a corporation, partnership, association, or other "person." 1978 Op. Att'y Gen. No. 78-4.

### School Property

**All local school property is subject to power and control of local board of education.** 1945-47 Op. Att'y Gen. p. 206.

**Comparison of school board's authority to convey school property held in trust and property when title is absolute.** 1989 Op. Att'y Gen. U89-16.

**Section requires board's discretion on use of school property to be reasonably exercised.** — That portion of this section which limits the control of school property to such uses "as they think will best serve the interests of the . . . schools" is construed as requiring the board's discretion, albeit broad, to be reasonably exercised, and should a use be clearly shown to interfere with and be detrimental to the use of a school for public school purposes, the authorization of the use by the board would be an abuse of the board's discretion and illegal. 1963-65 Op. Att'y Gen. p. 401 (see O.C.G.A. § 20-2-520).

**County board has authority and power to select, locate, and acquire sites for school buildings in the board's county,** according to the board's judgment and discretion, subject only to the approval or disapproval by the State Board of Education upon appeal. 1958-59 Op. Att'y Gen. p. 117.

**County board empowered to subsequently make changes and relocations.** — When a county board of education has previously selected sites for schools and school building projects, the board has the power to subsequently make changes and relocations of these school sites, and when approved by the State Board of Education these actions become final. 1958-59 Op. Att'y Gen. p. 117.

**County board not authorized to acquire land for construction and resale.** — County school board is not authorized to acquire land for the purpose of general construction and subsequent resale of the improved property. 1974 Op. Att'y Gen. No. 74-126.

**Title to property of abolished district passed to county board.** — Title to school property located within the county and recorded as being owned by the trustees of an abolished school district passed by operation of law to the county board of education upon the abolition and merger of the local school district into the county system. 1954-56 Op. Att'y Gen. 265.

**Board may accept building or property under lease as gift from owner.** — County board of education has the clear authority to accept any building or property that the board may now or in the future have under lease as a gift to the county school system from the owner. 1950-51 Op. Att'y Gen. p. 39.

**County board may accept voluntary contributions from pupils.** — It would not be illegal for a local board of education to accept voluntary contributions from pupils and use these contributions to purchase supplies and workbooks that would otherwise be unavailable because of budgetary difficulties. 1954-56 Op. Att'y Gen. p. 256.

**County board of education is proper agency to determine use of**

**timber on school property.** 1948-49 Op. Att'y Gen. p. 110.

**Board required to maintain buildings in as good a state of repair as facilities permit.** — This section clearly charges the county board of education with the duty to care for school buildings, and this requirement certainly would include the maintenance of school buildings in as good a state of repair as the facilities available to the board permit. 1948-49 Op. Att'y Gen. p. 108 (see O.C.G.A. § 20-2-520).

**Expenditure of school tax funds for repair, maintenance, and upkeep of leased premises is authorized.** 1960-61 Op. Att'y Gen. p. 170.

**Board may pay for cost of street or sidewalk paving on assessment basis.** — County board of education may pay the board's part of the cost of street or sidewalk paving in a municipality, provided the cost is paid on an assessment basis. 1948-49 Op. Att'y Gen. p. 99.

**State, county, and city cannot give or donate property to private individual or institution.** — Neither the State of Georgia, a Georgia county, or a Georgia city can constitutionally give or donate school property to a private individual or institution; outright sale of such school property with no strings attached is permissible. 1958-59 Op. Att'y Gen. p. 175.

**County school board cannot give or donate property to private individual or institution.** — While the discretionary powers of a county school board are exceedingly broad, it is quite clear that this section does not authorize a county school board to make a "gift" of school property to a citizen or group of citizens; the power of disposition, other than to a municipality of property lying within the municipality, is limited to the "sale" of such property after the board has found (presumably by resolution) that the property is either unnecessary for, or inconvenient to, school purposes; the word "sale," of course, normally contemplates the payment of money in exchange for the transfer of property. 1963-65 Op. Att'y Gen. p. 628 (see O.C.G.A. § 20-2-520).

**Boards' discretion regarding control, management, and disposition of school property.** — This section vests



**School Property (Cont'd)**

very broad discretionary power in local boards of education as regards control, management, and disposition of schoolhouses and school property, and the propriety of and manner of sale of this property is a matter as to which the local board should exercise proper discretion and judgment on behalf of the citizens and taxpayers of the county. 1960-61 Op. Att'y Gen. p. 172 (see O.C.G.A. § 20-2-520).

**Board authorization to sell particular property.** — To determine whether a county board of education has authority to sell any particular school property in a particular manner and to deposit the proceeds of sale in the general fund rather than in a special trust account for special or general capital outlay purposes will depend upon the facts related to the property in question, including the property's source or the source of the funds used for the property's purchase or construction, and upon the facts related to the need for other capital improvements or expenditures. 1969 Op. Att'y Gen. No. 69-334.

**Conveyance by private sale.** — County board of education may convey property no longer needed for school purposes by a private sale. 1982 Op. Att'y Gen. No. 82-31.

Since O.C.G.A. § 20-2-520 vests title to school property in the county boards of education, as opposed to the counties themselves, public sale requirements of O.C.G.A. § 36-9-3, which apply only to county property, do not govern disposition of such property. 1982 Op. Att'y Gen. No. 82-31.

**Board may sell schoolhouse site when site has become "unnecessary or inconvenient."** — Plenary power granted to the board to make all arrangements necessary to the efficient operation of the schools seems to be restricted somewhat when it is to be exercised for the purpose of selling schoolhouses or other property. The board may sell schoolhouse sites "when, in the opinion of the county board . . . [the] site has become unnecessary or inconvenient," and the determination of whether or not the site has become "unnecessary or inconvenient" is left entirely to the opinion of the board; this

determination is entirely a discretionary matter and unless the board flagrantly abuses the board's discretionary power, the property may be used as the board sees fit. 1948-49 Op. Att'y Gen. p. 101.

**Money received from sale of schoolhouse site.** — County board of education can sell any school building when the board by resolution declares that the building is not necessary or convenient for school purposes, but all money received from the sale can be used by the board for school purposes and none other, i.e., the board cannot legally make a contribution to a health center nor buy any property which is not to be used for school purposes. 1954-56 Op. Att'y Gen. p. 223.

**Sale price for school property lies within the discretion of the county board of education.** 1960-61 Op. Att'y Gen. p. 173.

**Board not authorized to sell and buy back recently erected school building.** — County board of education is not authorized to sell a recently erected school building and at the same time buy back the same building, to be paid for over a period of years, to obtain funds with which to equip the building and other buildings in the school system. 1952-53 Op. Att'y Gen. p. 72.

**Board may improve football field only when property's title in board.** — County board of education can expend school funds on improving a football field only when title to the property is in the board (this would exclude a nonprofit athletic association); the management of the property would be under the county board of education or the board's authorized agent. 1954-56 Op. Att'y Gen. p. 245.

**Construction of gymnasiums is a proper subject for the expenditure of school funds.** 1973 Op. Att'y Gen. No. U73-61.

**Gymnasium construction authorized.** — County board of education can expend school funds for the construction of a gymnasium only when title to the property is in the board (this would exclude a nonprofit athletic association); the management of the property would be under the county board of education or the board's authorized agent. 1957 Op. Att'y Gen. p. 117.



**County board of education could legally levy a tax to build, purchase, or acquire school buildings.** 1945-47 Op. Att'y Gen. p. 170.

**Section gives county board authority to build schoolhouses** by tax upon all property within county outside of independent school systems; schoolhouses are public buildings and the county board of education can recommend the levy of a tax for the building of schoolhouses when the board does not create a debt which extends beyond the current year for which the tax is levied. 1945-47 Op. Att'y Gen. p. 136.

**State board may impose "competitive bidding" requirement for school construction.** — State law does not impose a "competitive bidding" requirement upon local school boards in connection with the construction of school facilities; however, the State Board of Education may impose this requirement upon local school boards if and when state funds are involved in the project. 1977 Op. Att'y Gen. No. 77-32.

**Board authorized to lease school sites and expend money on leased property.** — It would seem from this section that the county board has the authority to lease school sites and, in the absence of any statutory prohibition and in the presence of the plenary grant of authority to the county boards of education, the county boards may expend tax money on leased property. 1948-49 Op. Att'y Gen. p. 112 (see O.C.G.A. § 20-2-520).

**Board not authorized to lease school property to private citizens.** — County board of education has no authority to lease school property, no longer needed for school purposes, to private citizens to be used as a recreation center. 1958-59 Op. Att'y Gen. p. 98.

**Use by nonprofit organizations without rent.** — Local boards of education may not allow nonprofit organizations to use empty school buildings without the payment of rent, except for certain educational purposes that do not interfere with the primary use of the school building. 1984 Op. Att'y Gen. No. 84-37.

**After school care programs.** — Department of Human Resources may not

license "latch key" or "after school" care programs operated by county school systems on their premises. 1985 Op. Att'y Gen. No. 85-11.

**County board of education may lawfully lease** school buildings or facilities from the county; such a lease is subject to attack, however, if the lease is so unreasonable as to constitute a gross abuse of the board's discretion. 1973 Op. Att'y Gen. No. 73-14.

**Lease of property for school purposes.** — Under this section, a county board of education is authorized to lease on a year to year basis with a renewal clause a building or buildings for common school purposes from the county when in the board's discretion it is deemed to be in the best interest of the common schools of the county; further a county board of education would be authorized to specify the type and design of construction of a building that the board would be agreeable to rent or lease. 1950-51 Op. Att'y Gen. p. 39 (see O.C.G.A. § 20-2-520).

Counties and school districts have authority under O.C.G.A. §§ 20-2-520 and 36-9-3(c) to enter into intergovernmental contracts in which the county leases real property to the school board for use as a site for a public school or other educational purpose. 1998 Op. Att'y Gen. No. 98-13.

**Distinction between lease involving compensation and permit under this section.** — There is one significant distinction between the situation of a lease not exceeding five years under Ga. L. 1956, p. 10, § 1 (see O.C.G.A. § 20-2-600) (with compensation involved) and a mere permit under former Code 1933, § 32-909 (see O.C.G.A. § 20-2-520) (no monetary consideration involved): when the local board enters into a lease agreement under the former section, such as the lease of a particular classroom to a private teacher during specified hours, the lease will be binding upon the board during the term of the lease even though it might to some extent interfere with the use of the classroom for school purposes; when, however, there is only a "free of charge" permission to teach private lessons, such use by a private teacher or private lessons could become illegal if the use interfered with

**School Property (Cont'd)**

the primary use of the school building or any room or part thereof for public education purposes. 1963-65 Op. Att'y Gen. p. 401.

**Board may mortgage buses to retire debts of school system.** — Inasmuch as the county boards of education are vested with the title and control of all school property and have been granted the power to borrow money, these plenary grants of authority are sufficient to authorize the board to use the school property as the board may see fit and, therefore, a county board of education may mortgage school buses to retire debts of the county school system. 1948-49 Op. Att'y Gen. p. 104.

**Board may deposit funds in building and loan association.** — There is no statutory prohibition against depositing school funds in a building and loan association and it therefore seems to be within the plenary authority of the county board of education to do so. 1948-49 Op. Att'y Gen. p. 108.

**Attendance and Transportation**

**Section is sufficient authority** for board to arrange and delimit attendance areas in the county of the board's jurisdiction, excluding of course independent school districts within the county. 1948-49 Op. Att'y Gen. p. 100 (see O.C.G.A. § 20-2-520).

**Board authorized to consolidate school districts.** — County board of education is vested with the authority to consolidate schools when, in the opinion of the board, the consolidation is in the best interests of the schools and the pupils of the county; this is a duty and responsibility which is vested in the school board rather than the State Board of Education. 1948-49 Op. Att'y Gen. p. 502.

**Ages of children who may be taught matter addressed to board.** — Minimum and maximum ages of children who may be taught in the public schools is a matter which addresses itself to the local boards of education. 1965-66 Op. Att'y Gen. No. 65-10.

**Arrangements necessary to schools' efficient operation.** — Phrase "arrangements necessary to the efficient operation

of the schools" must include those methods required to safely convey pupils from their homes to the classroom and back, including utilization of a student safety patrol. 1963-65 Op. Att'y Gen. p. 423.

**Agreement whereunder board leases school buses** for single year is not on the agreement's face illegal merely because the agreement also gives the school board three one-year renewal options coupled with a purchase option exercisable at the end of the final renewal period; such an agreement might be subject to attack, however, if the yearly "rental payments" are so grossly in excess of what reasonably could be considered to be the "fair rental value" of the buses as to lead to a conclusion that the transaction, while disguised as a lease plus purchase option, is essentially a "conditional sale." 1965-66 Op. Att'y Gen. No. 65-33.

**Board has right to use buses for purposes serving interests of schools.**

— County board is not restricted to the technical use of school buses for transporting pupils and school employees to and from the public schools; the county board would have the right to use the school buses for school purposes which serve the interest of the common schools, but the board would not have the right to use school buses for any purposes which would not serve the interest of the common school. 1948-49 Op. Att'y Gen. p. 88.

**School buses may be used for athletic contests or other educational programs.** — County board of education would have the right and power to use school buses for the purpose of transporting school children to and from athletic contests participated in by the public schools of the state or for such other educational programs adopted and used by the public schools for the purpose of educating school children. 1948-49 Op. Att'y Gen. p. 88.

**Board may provide that no bus shall transport pupils to any unassigned attendance area.** — Under the general regulatory powers granted county boards of education, a county board, when the board deems it to be in the best interest for and for the most efficient operation of the schools of the county, may by regulations duly adopted provide that



no school bus under the jurisdiction of the county board of education shall transport pupils to any attendance area other than

areas to which the school bus has been assigned by the board. 1950-51 Op. Att'y Gen. p. 272.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 58 et seq., 64, 78 et seq., 91 et seq., 104, 105.

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 8, 9, 138 et seq., 508 et seq., 523 et seq., 535 et seq., 560 et seq. 78A C.J.S., Schools and School Districts, § 789 et seq.

**ALR.** — Power to require construction or repair of school buildings, 1 ALR 1559.

Gift for public school as a valid charitable gift, 48 ALR 1126.

Gift for lectures as a valid charitable gift, 48 ALR 1142.

Extent of power of school district to provide for the comfort and convenience of teachers and pupils, 52 ALR 249.

Power of school or local authorities as to granting leases of school property, 111 ALR 1051.

Particular purposes within contemplation of statute authorizing issuance of bonds or use of funds by school district for specified purposes, 124 ALR 883.

Title to buildings when school lands revert for nonuse for school purposes, 28 ALR2d 564.

Use of public school premises for religious purposes during nonschool time, 79 ALR2d 1148.

Zoning regulations as applied to public elementary and high schools, 74 ALR3d 136.

### 20-2-521. Power of condemnation.

County boards of education and independent school systems are authorized to take and damage, by condemnation, private property for public school purposes, either for public school building sites, playgrounds, athletic fields, or other purposes in connection with the public elementary or high schools or any public educational program which is now or may be hereafter authorized by law. (Ga. L. 1947, p. 1130, § 1; Ga. L. 1956, p. 100, § 1; Ga. L. 1983, p. 3, § 53.)

**Cross references.** — Eminent domain, Ga. Const. 1983, Art. IX, Sec. II, Para. V.

Condemnation procedure generally, T. 22, C. 2.

### JUDICIAL DECISIONS

**Expenditure of public funds for purpose of constructing football stadium is authorized.** *Herren v. Board of Educ.*, 219 Ga. 431, 134 S.E.2d 6 (1963).

**When sewer line necessary, immaterial that other individuals served.** — When the evidence shows a necessary school purpose in constructing a sewer line, it is immaterial that other individuals may be served. *Norton Realty & Loan Co. v. Board of Educ.*, 129 Ga. App. 668, 200 S.E.2d 461 (1973).

**Extraterritorial exercise of power as unreasonable.** — In attempting to

condemn condemnee's property outside its jurisdiction for purpose of constructing an athletic track adjacent to a school also outside its jurisdiction, condemnor county board of education exceeded the board's authority inasmuch as such an extraterritorial exercise of power of condemnation was not "reasonably necessary" to the full exercise of any authority otherwise expressly granted to the condemnor. *Mallory v. Upson County Bd. of Educ.*, 163 Ga. App. 377, 294 S.E.2d 599 (1982).

**Condemnor may take land outside territorial limits.** — When the power of



eminent domain is being utilized for the purpose of creating or improving a sewage system and the land taken is reasonably necessary to accomplish this end, the condemning authority may take land outside the authority's territorial limits. *Norton Realty & Loan Co. v. Board of Educ.*, 129 Ga. App. 668, 200 S.E.2d 461 (1973).

**Junior college established and administered by county board constitutes "public educational program."** — Junior college which is established, constructed, equipped, maintained, operated, and administered by a county board of education as a "community educational institution" is clearly a "public educational program." *Sheppard v. DeKalb County Bd. of Educ.*, 220 Ga. 219, 138 S.E.2d 271 (1964).

**Adequate notice to those whose property condemned states condem-**

**nation's purpose.** — Resolution in order to give adequate notice of purpose to those whose property is being condemned need not go into a detailed analysis of what type of school facility or building is being contemplated so long as it sufficiently puts one on notice that the condemnation is for public school purposes or for educational purposes as authorized by law. *Sheppard v. DeKalb County Bd. of Educ.*, 220 Ga. 219, 138 S.E.2d 271 (1964).

**Proceeding before special master.** — Superior court did not err in holding that condemnor county board of education was authorized to proceed under special master act in exercising power of eminent domain. *Mallory v. Upson County Bd. of Educ.*, 163 Ga. App. 377, 294 S.E.2d 599 (1982).

**Cited in** *Grimes v. Clark*, 226 Ga. 195, 173 S.E.2d 686 (1970).

## OPINIONS OF THE ATTORNEY GENERAL

**Board may condemn for school purposes.** — County board of education may legally condemn land for school purposes assuming that the proceeding therefor is

brought in the name of the individual members of the county board of education. 1952-53 Op. Att'y Gen. p. 57.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 45, 86 et seq.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 508.

**ALR.** — Condemnation of premises or part thereof as affecting rights of landlord and tenant inter se, 163 ALR 679.

Condemner's waiver, surrender, or limitation, after award, of rights or part of property acquired by condemnation, 5 ALR2d 724.

Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property during pendency of the proceeding, 55 ALR2d 781.

Admissibility, in eminent domain proceeding, of evidence as to price paid for

condemned real property on sale prior to the proceeding, 55 ALR2d 791.

Amount of property which may be condemned for public school, 71 ALR2d 1071.

Zoning regulations as applied to public elementary and high schools, 74 ALR3d 136.

Eminent domain: Right of owner of land not originally taken or purchased as part of adjacent project to recover, on enlargement of project to include adjacent land, enhanced value of property by reason of proximity to original land—state cases, 95 ALR3d 752.

Eminent domain: Recovery of value of improvements made with knowledge of impending condemnation, 98 ALR3d 504.

## 20-2-522. Condemnation procedure.

Condemnation proceedings by the boards and systems referred to in Code Section 20-2-521 shall take the form provided in Chapter 1 of Title 22 and Article 1 of Chapter 2 of Title 22 or the form provided in Article

3 of Chapter 2 of Title 22, provided that county boards of education in counties of this state having a population (including the population of any independent school district located in such county) of more than 500,000 according to the United States decennial census of 1950 or any future such census may use the form provided in Article 2 of Chapter 2 of Title 22. (Ga. L. 1947, p. 1130, § 2; Ga. L. 1953, Nov.-Dec. Sess., p. 174, § 1; Ga. L. 1956, p. 100, § 2; Ga. L. 1961, p. 2864, § 1; Ga. L. 1982, p. 2107, § 20.)

### JUDICIAL DECISIONS

#### **Proceeding before special master.**

— Superior court did not err in holding that condemnor county board of education was authorized to proceed under special master act in exercising power of eminent domain. *Mallory v. Upson County Bd. of Educ.*, 163 Ga. App. 377, 294 S.E.2d 599 (1982).

The 1967 amendment to the special master act should be construed as evidencing legislative intent that special master proceeding be considered a “supplementary” and “cumulative” form of condemnation in all cases wherein condemnor otherwise possesses power of eminent domain. *Mallory v. Upson County Bd. of Educ.*, 163 Ga. App. 377, 294 S.E.2d 599 (1982).

**Adequate notice to those whose property condemned states condemnation’s purpose.** — Resolution in order to give adequate notice of purpose to those whose property is being condemned need

not go into a detailed analysis of what type of school facility or building is being contemplated so long as the notice sufficiently puts one on notice that the condemnation is for public school purposes or for educational purposes as authorized by Ga. L. 1956, p. 100, § 1. *Sheppard v. DeKalb County Bd. of Educ.*, 220 Ga. 219, 138 S.E.2d 271 (1964).

**Separate equitable petition enjoining condemnation not valid.** — Plaintiff’s claim that defendants’ intentions in planning to condemn plaintiff’s property without public need and without the funds to pay for the property presented a threat of irreparable harm to plaintiff in the future was not cognizable under Georgia law because a separate equitable petition to enjoin a condemnation governed by the statute will not lie. *Saffold v. Carter*, 739 F. Supp. 1541 (S.D. Ga. 1990).

**Cited in** *Herren v. Board of Educ.*, 219 Ga. 431, 134 S.E.2d 6 (1963).

### RESEARCH REFERENCES

**ALR.** — Amount of property which may be condemned for public school, 71 ALR2d 1071.

Zoning regulations as applied to public elementary and high schools, 74 ALR3d 136.

## PART 2

### EXEMPTION FROM LEVY AND SALE

#### **20-2-540. Exemption of school property from levy and sale.**

Each and every lot or parcel of land which has been or may hereafter be obtained by any county board of education or independent school district, together with any buildings erected thereon for school purposes and all school furniture, shall be exempt from levy and sale under any

execution or other writ or order in the nature of an execution, provided that the lot of land so exempted shall not exceed ten acres; and if there is any excess over that number of acres, then that portion not to exceed ten acres most convenient for school purposes shall be exempt as provided in this Code section, the exempted portion to be set off by order of the county board or the boards of trustees of the independent school system. (Ga. L. 1919, p. 288, § 116; Ga. L. 1926, Ex. Sess., p. 17, § 1; Code 1933, § 32-943; Ga. L. 1946, p. 206, § 7; Ga. L. 1992, p. 6, § 20.)

**Cross references.** — Execution and judicial sales generally, T. 9, C. 13.

### PART 3

#### GEORGIA EDUCATION AUTHORITY (SCHOOLS)

**Law reviews.** — For article, "School Systems, Segregation and the Supreme Court," see 6 Mercer L. Rev. 189 (1955). For article, "Public Authorities: Legislative Panacea?," see 5 J. of Pub. L. 387 (1956).

#### OPINIONS OF THE ATTORNEY GENERAL

**Not policy of authority to join in city annexation application.** — It is not the policy of the authority to join in an application for annexation of state-owned property to a city. 1968 Op. Att'y Gen. No. 68-229.

**Municipalities or counties cannot require building fees for construction on authority property.** — Building permit fees may not be legally required by municipalities or counties of contractors on buildings being constructed for the authority on authority property. 1963-65 Op. Att'y Gen. p. 493.

**Authority does not directly super-**

**vise construction projects of less than \$200,000.00.** — When allotted funds from the State Board of Education for school construction result in construction projects of less than \$200,000.00, the authority does not directly supervise construction but requires the local school system to construct the project itself and then be reimbursed by the authority; this procedure often makes it necessary for the local school system to borrow a substantial part of the construction costs for a period of nine months to a year; such borrowing is within the legal power of local school systems. 1968 Op. Att'y Gen. No. 68-18.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 30 Am. Jur. 2d, Executions and Enforcement of Judgments, §§ 167, 168.

**C.J.S.** — 33 C.J.S., Executions, § 42.

#### 20-2-550. Short title.

This part may be cited as the "Georgia Education Authority (Schools) Act." (Ga. L. 1951, p. 241, § 1; Ga. L. 1967, p. 871, § 1.)



## JUDICIAL DECISIONS

**Appointment of House Speaker as member of authority constitutional.**

— Since membership in the authority is neither an office to which emoluments are annexed nor a civil office, the appointment of the Speaker of the House of Representatives as a member did not offend the Georgia Constitution. *Sheffield v. State Sch. Bldg. Auth.*, 208 Ga. 575, 68 S.E.2d 590 (1952).

**Property owned by authority not public property.**

— Although the authority is empowered to own and use properties for public school purposes, it is, nevertheless, the owner of that property and the authority is not the state, or a part of the state, or an agency of the state. Therefore, the property is not public property as contemplated by the Georgia Constitution. *Sheffield v. State Sch. Bldg. Auth.*, 208 Ga. 575, 68 S.E.2d 590 (1952).

**Properties of the authority are devoted exclusively to public charity as contemplated by the Constitution.** *Sheffield v. State Sch. Bldg. Auth.*, 208 Ga. 575, 68 S.E.2d 590 (1952).

**County board of education authorized to enter rental contracts.** — Although the constitutional provision upon which this part and all proceedings taken thereunder are based does not expressly authorize a county board of education as such to enter rental contracts, it does expressly authorize counties to do so, and, under repeated rulings of the Supreme Court, such contracts by the county boards of education are corporate actions of the counties. *Sheffield v. State Sch. Bldg. Auth.*, 208 Ga. 575, 68 S.E.2d 590 (1952).

**Cited in** *Hospital Auth. v. Stewart*, 226 Ga. 530, 175 S.E.2d 857 (1970).

## RESEARCH REFERENCES

**ALR.** — Liability of school or school personnel in connection with suicide of student, 17 ALR5th 179.

**20-2-551. Definitions; when project deemed self-liquidating.**

(a) As used in this part, the term:

(1) “Authority” means the Georgia Education Authority (Schools), which was formerly known as the State School Building Authority. Such change in the name of the authority shall in no way affect the identity of the authority or the rights, powers, privileges, or liabilities of the authority or any person under this part.

(2) “Bonds” or “revenue bonds” means any bonds issued by the authority under this part, including refunding bonds.

(3) “Cost of the project” means the cost of construction; the cost of all lands, properties, rights, easements, and franchises acquired; the cost of all machinery and equipment; financing charges; interest prior to and during construction and for one year after completion of construction; cost of engineering; architectural and legal expenses; cost of plans and specifications and other expenses necessary or incident to determining the feasibility or practicability of the project; administrative expense; and such other expenses as may be necessary or incident to the financing authorized in this part, the construc-

tion of any project, the placing of it in operation, and the condemnation of property necessary for such construction and operation. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds issued under this part for such project.

(4) "Project" means one or a combination of two or more of the following: buildings and facilities intended for use as school buildings; classrooms; laboratories; libraries; and instructional, administrative, and recreational facilities for students, faculty, officers, and employees of any institution or unit under the control of a county board of education, city board of education, or governing bodies of independent districts or systems; and all structures; electric, gas, steam, and water utilities; and facilities of every kind and character deemed by the authority necessary or convenient for the efficient operation of any unit which is a part of any such institution, including the improving, altering, or repairing of such unit.

(5) "Unit" shall mean any institution, school, or academy, at any particular location, which forms a part of the public school system of this state, operated by a county board of education, city board of education, or governing bodies of independent districts or systems.

(b) Any project or combination of projects shall be deemed "self-liquidating" if, in the judgment of the authority, the revenues, rents, or earnings to be derived by the authority therefrom will be sufficient to pay the cost of maintaining, repairing, and operating the project and to pay the principal and interest of revenue bonds which may be issued for the cost of such project, projects, or combination of projects. (Ga. L. 1951, p. 241, § 3; Ga. L. 1964, p. 112, § 1; Ga. L. 1967, p. 871, § 3; Ga. L. 1992, p. 6, § 20.)

#### OPINIONS OF THE ATTORNEY GENERAL

**Authority without power to contract with private school systems.** — This section, in setting forth the definitions of "project" and "unit," as to which later sections confer upon the authority the power to contract with respect to, apparently is confined to public educational systems, so that as presently constituted, it seems safe to assume that the authority is without power to contract with private school systems with regard to school facilities; however, this does not, in and of itself, prohibit the public school

system or lessee, otherwise authorized, from assigning, subleasing, or otherwise disposing of its interest. 1954-56 Op. Att'y Gen. p. 224 (see O.C.G.A. § 20-2-551).

**Authority empowered to construct and lease recreational facility to public system.** — Authority has the discretionary power to construct and lease to a county, city, or independent school system any type or kind of recreational facility for the students, faculty, officers, and employees of the systems. 1950-51 Op. Att'y Gen. p. 440.

**20-2-552. Creation; members, officers, and staff; quorum; procedural rules and regulations; assignment to Georgia State Financing and Investment Commission.**

(a) There is created a body corporate and politic to be known as the Georgia Education Authority (Schools), which shall be deemed to be an instrumentality of the State of Georgia and a public corporation and by that name, style, and title such body may contract and be contracted with, bring and defend actions, and implead and be impleaded. The authority shall consist of five members, as follows: three appointees of the Governor, one appointee of the Lieutenant Governor, and one appointee of the Speaker of the House of Representatives. The terms of office for all members shall be three years and until their successors are appointed and qualified.

(b) The authority shall elect one of its members as chairperson and another as vice chairperson and a secretary and treasurer, who need not necessarily be a member of the authority. The majority of the members of the authority shall constitute a quorum. No vacancy on the authority shall impair the right of the quorum to exercise all the rights and perform all the duties of the authority. The members of the authority shall not be entitled to compensation for their services but shall be entitled to and shall be reimbursed for their actual expenses necessarily incurred in the performance of their duties. The authority may have staff assigned from within the Department of Education or the Georgia State Financing and Investment Commission for the purposes of carrying out the authority's duties and responsibilities, with compensation paid from resources available to the authority or the Department of Education or the Georgia State Financing and Investment Commission, as the department, the commission, and the authority may agree. The Department of Education and all other state or local government entities shall provide all necessary assistance requested by the authority. The Georgia State Financing and Investment Commission shall provide financial advisory services to the authority in accordance with Code Section 50-17-22, and all debt of the authority shall be subject to the approval of the Georgia State Financing and Investment Commission. The authority shall make rules and regulations for its own government. It shall have perpetual existence. Any change in name or composition of the authority shall in no way affect the vested rights of any person under this part or impair the obligations of any contracts existing under this part.

(c) The authority is assigned to the Georgia State Financing and Investment Commission for administrative purposes only as prescribed in Code Section 50-4-3. (Ga. L. 1951, p. 241, § 2; Ga. L. 1959, p. 28, §§ 1, 2; Ga. L. 1959, p. 363, § 1; Ga. L. 1967, p. 871, § 2; Ga. L. 1972, p. 1015, § 415; Ga. L. 1988, p. 426, § 1; Ga. L. 2010, p. 1001, § 2/HB 936.)



**The 2010 amendment**, effective July 1, 2010, in subsection (a), deleted “which” preceding “by that name” in the first sentence, rewrote the second sentence, and added the last sentence; in subsection (b), in the first sentence, substituted “chairperson” for “chairman”, substituted “vice chairperson” for “vice-chairman”, and deleted “but who shall be the same as the secretary and treasurer of the Georgia Education Authority (University)” from

the end, deleted the former fifth sentence, which read: “The staff of the authority shall be the same as the staff of the Georgia Education Authority (University).”, and added the present fifth through seventh sentences; and, in subsection (c), substituted “Georgia State Financing and Investment Commission” for “Department of Administrative Services” in the middle.

### JUDICIAL DECISIONS

**Cited** in *Steadham v. State*, 224 Ga. 78, 159 S.E.2d 397 (1968).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 66 et seq.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 98 et seq.

### 20-2-553. Powers of authority.

(a) The authority shall have the power:

(1) To have a seal and alter it at pleasure;

(2) To acquire by purchase, lease, or otherwise and to hold, lease, sell, and dispose of real and personal property of every kind and character for its corporate purposes;

(3) To acquire in its own name by purchase, on such terms and conditions, and in such manner as it may deem proper, or by condemnation in accordance with any and all existing laws applicable to the condemnation of property for public use, real property or rights of easements therein or franchises necessary or convenient for its corporate purposes and to use them so long as its corporate existence shall continue and to lease or make contracts for the use of or dispose of them in any manner it deems to the best advantage of the authority, the authority being under no obligation to accept and pay for any property condemned under this part, except from the funds provided under the authority of this part. In any proceedings to condemn, such orders may be made by the court having jurisdiction of the action or proceeding as may be just to the authority and to the owners of the property to be condemned; and no property shall be acquired under this part upon which any lien or other encumbrance exists unless at the time such property is so acquired a sufficient sum of money is deposited in trust to pay and redeem the fair value of such lien or encumbrance. If the authority shall deem it expedient to construct any project on lands which are subject to the control of the

public school system of the state or of any county board of education, city board of education, or governing body of an independent or quasi-independent district or system or local unit of administration, the Governor, in the case of the state, or the boards of education of counties or cities, or the equivalent governing authorities of independent school districts or systems are authorized to execute for and in behalf of the state or the various county boards of education, city boards of education, or governing bodies of independent districts or systems, as the case may be, a lease upon such lands to the authority for such parcel or parcels as shall be needed for a period not to exceed 50 years, at a nominal rental of \$1.00 per year. If the authority shall deem it expedient to construct any project on any other lands the title to which shall then be in the state, the Governor is authorized to convey, for and in behalf of the state, title to such lands to the authority, upon payment into the state treasury for the credit of the general fund of the state of the reasonable value of such lands, such value to be determined by three appraisers to be agreed upon by the Governor and the chairperson of the authority. Further, if the authority shall deem it expedient to construct any project on any other lands the title to which shall then be in any county, municipality, or other governmental subdivision of the state, the proper authorities of such county, municipality, or governmental subdivision are authorized to convey, for and in behalf of such county, municipality, or governmental subdivision, title to such lands to the authority, upon payment to the proper fiscal officer of the county, municipality, or other governmental subdivision of the reasonable value of such lands, such value to be determined by three appraisers to be agreed upon between such governmental authorities and the chairperson of the authority;

(4) To appoint and select officers, agents, and employees, including engineering, architectural, and construction experts, fiscal agents, and attorneys, and to fix their compensation;

(5) To make contracts, agreements of sale, and leases and to execute all instruments necessary or convenient, including contracts for construction of projects, agreements for the sale of projects, and leases of projects or contracts for the use of projects which the authority causes to be erected or acquired; and any and all political subdivisions, departments, institutions, or agencies of the state are authorized to enter into contracts, leases, or agreements with the authority upon such terms and for such purposes as they deem advisable. Without limiting the generality of the foregoing, authority is specifically granted to the county boards of education, city boards of education, or governing bodies of independent districts or systems, for and on behalf of the units and institutions within their respective counties, cities, or districts, and to the authority to enter into

contracts, agreements of sale, and lease agreements for the purchase or use of any structure, building, or facilities of the authority for a term not exceeding 50 years; and the board of education or equivalent governing body for and on behalf of the respective political subdivision may obligate itself and its successors to use only such structure, building, or facility and none other and so long as such property is used by such political subdivision to pay an amount to be determined from year to year for the use of such property so leased and also to obligate itself and its successors as a part of the lease contract to pay the cost of maintaining, repairing, and operating the property so leased from the authority;

(6) To construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage projects, as defined in paragraph (4) of subsection (a) of Code Section 20-2-551, to be located on property owned by or leased by the authority, the cost of any such project to be paid in whole or in part from the proceeds of revenue bonds of the authority, from such proceeds and any grant from the United States or any agency or instrumentality thereof, or from any other source;

(7) To accept loans or grants of money or materials or property of any kind from the United States or any agency or instrumentality thereof upon such terms and conditions as the United States or such agency or instrumentality may impose;

(8) To borrow money for any of its corporate purposes and to issue negotiable revenue bonds payable solely from funds pledged for that purpose and to provide for the payment of such bonds and for the rights of the holders thereof;

(9) To exercise any power usually possessed by private corporations performing similar functions which is not in conflict with the Constitution and laws of this state;

(10) To issue various types of bonds with various federal tax consequences and to apply for and participate in any federal program which provides financial or other benefits or is supportive of functions of the authority. For purposes of federal law and without limiting the powers of the authority to issue other types of bonds and to participate in federal programs, the authority may act as the state education agency and may issue Qualified Zone Academy Bonds, Qualified School Construction Bonds, or Build America Bonds or, in its discretion, permit other authorized governmental bodies to issue Qualified Zone Academy Bonds, Qualified School Construction Bonds, or Build America Bonds. In participating in any federal program, the authority may apply for and receive funds, make certifications and designations, and do all other things necessary or convenient in the



opinion of the authority to participate in or obtain the benefits of federal programs, including programs of bond finance provided under federal law;

(11) Deposit, or arrange for, federal funds in any form to be deposited into the sinking fund provided for in Code Section 20-2-567; and

(12) To do all things necessary or convenient to carry out the powers expressly given in this part.

(b) The validity of any bonds issued by the authority for projects certified as eligible for state development assistance under Code Section 45-12-170 and issued prior to the time the first general obligation debt was incurred under Article VII, Section III, Paragraph I of the Constitution of 1945 shall not be impaired; but no future such bonds shall be issued. (Ga. L. 1951, p. 241, § 4; Ga. L. 1956, p. 11, § 1; Ga. L. 1974, p. 1215, § 6; Ga. L. 1983, p. 3, § 53; Ga. L. 2005, p. 319, § 1/HB 372; Ga. L. 2010, p. 1001, § 3/HB 936.)

**The 2010 amendment**, effective July 1, 2010, inserted “sell,” in paragraph (a)(2); in paragraph (a)(3), substituted “contracts for the use” for “contracts with respect to the use” in the first sentence, and substituted “chairperson” for “chairman” in the fourth and fifth sentences; in paragraph (a)(5), inserted “, agreements of sale,” twice, inserted “, agreements for the sale of projects,” in the first sentence, in the second sentence, substituted “foregoing” for “above” near the beginning, inserted “purchase or” near the middle, and

substituted a semicolon for a comma after “50 years”; deleted “or” preceding “from such proceeds” in paragraph (a)(6); deleted “and” at the end of paragraph (a)(9); added paragraphs (a)(10) and (a)(11); redesignated former paragraph (a)(10) as present paragraph (a)(12); and, in subsection (b), substituted “and issued” for “, which bonds were issued” near the middle.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2005, a period was deleted at the end of paragraph (a)(5).

## JUDICIAL DECISIONS

**After authority’s property leased to local board.** — When a local school board conveyed to the authority legal title to certain school premises, and after the authority contemporaneously therewith entered into a lease contract with the school board under the terms of which the property so conveyed was leased to the board for a period of 20 years with an absolute

right of reconveyance to the board at the end of that period, the authority had such an interest in the property as would enable the authority to join with the local board in maintaining an action against any person, or persons, liable on account of damages to the property. *Rodgers v. Styles*, 100 Ga. App. 124, 110 S.E.2d 582 (1959).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 28, 45, 78, 86 et seq., 96, 102, 357 et seq.

**C.J.S.** — 78 C.J.S., Schools and School

Districts, §§ 15, 16, 103 et seq. 78A C.J.S., Schools and School Districts, §§ 707 et seq., 717, 756.

**20-2-554. Functions and powers of Vocational Trade School Building Authority and School Building Authority for the Deaf and Blind transferred to authority.**

All of the rights, powers, and functions of the Vocational Trade School Building Authority and the School Building Authority for the Deaf and Blind shall be transferred to and conferred upon the authority. Upon such transfer of the rights, powers, and functions to the authority, the Vocational Trade School Building Authority and the State School Building Authority for the Deaf and Blind shall be abolished. (Ga. L. 1956, p. 806, §§ 1, 2.)

**Editor's notes.** — The Vocational Trade School Building Authority was created by Ga. L. 1951, p. 132. The State School Building Authority for the Deaf and Blind was created by Ga. L. 1951, p. 637.

**20-2-555. Authority to issue revenue bonds; terms.**

The authority, or any authority or body which has or which may in the future succeed to the powers, duties, and liabilities vested in the authority created by this part, shall have power, at one time or from time to time, to provide by resolution for the issuance of negotiable revenue bonds in an unlimited amount for the purpose of paying all or any part of the cost, as defined in paragraph (3) of subsection (a) of Code Section 20-2-551, of any one project or combination of projects. The principal and interest, if any, of such revenue bonds shall be payable solely from the special fund provided in this part for such payment. The bonds of each issue shall be dated; shall bear interest, if any, at such rate or rates, payable on a date or dates certain; shall mature at such time or times not exceeding 30 years from their date or dates; shall be payable in such medium of payment as to both principal and interest as may be determined by the authority; and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority in the resolution provided for the issuance of the bonds. (Ga. L. 1951, p. 241, § 5; Ga. L. 1960, p. 775, § 1; Ga. L. 2010, p. 1001, § 4/HB 936.)

**The 2010 amendment,** effective July 1, 2010, inserted “, if any,” in the second and third sentences, and substituted “on a date or dates certain” for “semiannually” in the third sentence of this Code section.

**Cross references.** — Revenue bonds generally, § 36-82-60 et seq.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 38 et seq., 358, 360, 362, 379, 380, 385.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 756.

## 20-2-556. Form of bonds; denominations; place of payment; registration.

The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, if any, thereof, which may be at any bank or trust company within or without the state. The bonds may be issued in coupon or registered form, or both, as the authority may determine; and provision may be made for the registration of any coupon bond as to principal alone and also as to both principal and interest, if any. (Ga. L. 1951, p. 241, § 6; Ga. L. 2010, p. 1001, § 5/HB 936.)

**The 2010 amendment**, effective July 1, 2010, inserted “, if any,” in the first sentence, and added “, if any” at the end of the last sentence of this Code section.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 163, 166, 172 et seq., 183.

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 761, 762, 764, 784.

## 20-2-557. Signing, sealing, and attesting bonds.

In case any officer whose signature shall appear on any bonds or whose facsimile signature shall appear on any coupon shall cease to be such officer before the delivery of such bonds, such signature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All such bonds shall be signed by the chairman of the authority, and the official seal of the authority shall be affixed thereto and attested by the secretary of the authority, and any coupons attached thereto shall bear the signature or facsimile signature of the chairman of the authority. Any coupon may bear the facsimile signature of such person, and any bond may be signed, sealed, and attested on behalf of the authority by such persons as at the actual time of the execution of such bonds shall be duly authorized or hold the proper office, although at the date of such bonds such persons may not have been so authorized or shall not have held such office. (Ga. L. 1951, p. 241, § 7.)



RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 166 et seq.      **C.J.S.** — 78A C.J.S., Schools and School Districts, § 784.

**20-2-558. Bonds negotiable.**

All revenue bonds issued under this part shall have all the qualities and incidents of negotiable instruments under Article 8 of Title 11. (Ga. L. 1951, p. 241, § 8.)

RESEARCH REFERENCES

**Am. Jur. 2d.** — 11 Am. Jur. 2d, Bills and Notes, §§ 5, 11, 20, 29.37, 40, 52, 80.      **ALR.** — Bond or warrant of governmental subdivision as subject of taxation or exemption, 44 ALR 510.  
**C.J.S.** — 78A C.J.S., Schools and School Districts, § 786.

**20-2-559. Manner of sale and price of bonds.**

The authority may sell its bonds in such manner and for such price as it may determine to be for the best interests of the authority. (Ga. L. 1951, p. 241, § 9; Ga. L. 1960, p. 775, § 2; Ga. L. 1967, p. 871, § 4; Ga. L. 2010, p. 1001, § 6/HB 936.)

**The 2010 amendment**, effective July 1, 2010, deleted the former last sentence, which read: “Whenever the authority shall determine to issue its bonds, it shall call upon the Georgia Building Authority to render advice and to perform, as its agent, ministerial services in connection with the marketing of such bonds.”  
**Cross references.** — Georgia Building Authority generally, T. 50, C. 9.

RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 196 et seq.      **C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 756, 779 et seq.

**20-2-560. Use of bond proceeds; additional bonds.**

The proceeds of bonds shall be used solely for the payment of the cost of the project or combined project and shall be disbursed upon requisition or order of the chairperson of the authority under such restrictions, if any, as the resolution authorizing the issuance of the bonds or the trust indenture mentioned in Code Section 20-2-565 may provide. If the proceeds of such bonds, by error of calculation or otherwise, shall be less than the cost of the project or combined project, unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust indenture, additional bonds may in like manner be issued to provide the amount of such deficit. Unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust

indenture, such additional bonds shall be deemed to be of the same issue and shall be entitled to payment from the same fund, without preference or priority, as the bonds first issued for the same purpose. If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which such bonds are issued, the surplus shall be paid into the fund provided in Code Section 20-2-567 for the payment of principal and interest, if any, of such bonds. (Ga. L. 1951, p. 241, § 10; Ga. L. 2010, p. 1001, § 7/HB 936.)

**The 2010 amendment**, effective July 1, 2010, substituted “chairperson” for “chairman” in the first sentence, and in-

serted “, if any,” near the end of the last sentence.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 88 et seq., 110 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 757, 758.

## **20-2-561. Issuance of interim receipts or certificates or temporary bonds.**

Prior to the preparation of definite bonds, the authority may, under like restrictions, issue interim receipts, interim certificates, or temporary bonds with or without coupons exchangeable for definite bonds upon the issuance of the latter. (Ga. L. 1951, p. 241, § 11.)

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 20.

## **20-2-562. Replacement of mutilated, destroyed, or lost bonds.**

The authority may also provide for the replacement of any bond which shall become mutilated or be destroyed or lost. (Ga. L. 1951, p. 241, § 12.)

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 269, 270.

## **20-2-563. Compliance with part sufficient for issuance of bonds; single issue for one or more projects; adoption of bond resolution.**

Revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings,

conditions, and things which are specified or required by this part. In the discretion of the authority, revenue bonds of a single issue may be issued for the purpose of paying the cost of any one or more, including a combination of, projects in any one city or in any one county or any number of counties. Any resolution providing for the issuance of revenue bonds under this part shall become effective immediately upon its passage and need not be published or posted. Any such resolution may be passed at any regular or special or adjourned meeting of the authority by a majority of its members. (Ga. L. 1951, p. 241, § 13.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 88, 110 et seq.  
**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 761, 787.

#### **20-2-564. Bonds not state debt; use of appropriations and other funds for leases from authority; collection of rentals; assignment of payments.**

(a) Revenue bonds issued under this part shall not be deemed to constitute a debt of the state or a pledge of the faith and credit of the state, but such bonds shall be payable solely from the fund provided for in Code Section 20-2-567. The issuance of such revenue bonds shall not directly, indirectly, or contingently obligate the state to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. All such bonds shall contain recitals on their face covering substantially the foregoing provisions of this Code section; provided, however, that such funds as may be received from state appropriations or from any other source are declared to be available and may be used on behalf of the county boards of education, city boards of education, or governing bodies of independent districts or systems for the performance of any lease contract entered into by such boards or governing bodies, unless the use of such funds shall be otherwise stipulated by law.

(b) In the event any county board of education, city board of education, or governing body of an independent school district or system shall enter into a lease contract or an agreement of sale with the authority as provided in this part, then any sums accruing to and for the benefit of such school district or system by virtue of any state appropriation to which such school district or system may be entitled shall be withheld from such school district or system and the State Board of Education shall, on behalf of such school district or system, apply so much thereof as is necessary directly to the authority until such time as the obligation of the lease contract or agreement of sale shall have been paid in full; it being intended that such sums, if any, as may be



appropriated by the legislature and to which a school district or system may be entitled shall be subject to be first applied on behalf of such school district or system to the extent necessary to the faithful performance of any lease contract or agreement of sale of that particular school district or system with the authority.

(c) In the event any such sums so appropriated by the legislature to the state board to and for the benefit of each county, city, or independent school district or system which has entered into a lease contract or an agreement of sale with the authority are not sufficient to discharge the lease or installment purchase obligations and undertakings therein agreed to be performed and should the school district or system fail to pay any sum necessary to make up the difference between the amount to be paid under the lease contract or agreement of sale and that actually paid by the state board on behalf of the school district or system directly to the authority as provided in subsection (b) of this Code section, then it shall be the duty of the authority to notify immediately, in writing, the state board, the Department of Education, and the Office of the State Treasurer of the amount due said authority, and thereupon the state board, the department, and the Office of the State Treasurer are authorized and directed to withhold from any other funds appropriated, allotted, or due to be paid to such county, city, or independent school district or system an amount sufficient to pay the obligation due the authority by the defaulting county, city, or independent school district or system for the rental or purchase of buildings or facilities; and the state board, the department, and the Office of the State Treasurer are authorized and directed to pay such funds to the authority on behalf of the county, city, or independent school district or system to be applied in payment on such unpaid rentals or installment payments of purchase price, such payment being charged against the respective funds due such county, city, or independent school district or system.

(d) The rentals contracted to be paid by the state board or other contracting or leasing department, agency, or institution of the state to the authority under leases or contracts entered upon pursuant to this part shall constitute obligations of the state for the payment of which the good faith of the state is pledged. Such rentals shall be paid as provided in the lease contracts from funds appropriated for such purposes by the terms of the Constitution of Georgia. It shall be the duty of the state board or other contracting or leasing department, agency, or institution of the state to see to the punctual payment of all such rentals.

(e) In the event of any failure or refusal on the part of any party punctually to perform any covenant or obligation contained in any contract entered upon pursuant to this part, the authority may enforce

performance by any legal or equitable process against such party; and consent is given for the institution of any such action.

(f) The authority shall be permitted to assign any payment due it by a contracting party to a trustee or paying agent as may be required by the terms of any trust indenture entered into by the authority. (Ga. L. 1951, p. 241, § 15; Ga. L. 1964, p. 112, § 1; Ga. L. 1972, p. 1015, § 408B; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296; Ga. L. 2010, p. 1001, § 8/HB 936.)

**The 2010 amendments.** — The first 2010 amendment, effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” three times in subsection (c). The second 2010 amendment, effective July 1, 2010, in subsection (a), substituted “Code Section 20-2-567” for “Code Section 20-2-577” in the first sentence; rewrote subsections (b) and (c); in subsection (e), substituted “any party” for “lessees”, substituted “contract” for “lease”, and substituted “such party” for “the lessees”; and substituted “payment due it by a contracting party”

for “rental due it by the lessees” near the beginning of subsection (f).

**Code Commission notes.** — The amendment of subsection (c) of this Code section by Ga. L. 2010, p. 863, § 2/SB 296, irreconcilably conflicted with and was treated as superseded by Ga. L. 2010, p. 1001, § 8/HB 936. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

Pursuant to Code Section 28-9-5, in 2010, “Office of the State Treasurer” was substituted for “Office of Treasury and Fiscal Services” in subsection (c).

## JUDICIAL DECISIONS

**Section is not void** upon the ground that the section attempts to vest legislative powers in the State Board of Education, and thus offends the Constitution, which vests all legislative powers in the General Assembly and commands that the

legislative, executive, and judicial powers remain forever separate and distinct. *Sheffield v. State Sch. Bldg. Auth.*, 208 Ga. 575, 68 S.E.2d 590 (1952) (see O.C.G.A. § 20-2-564).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 367, 374, 386 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 761, 787.

### **20-2-565. Trust indentures to secure bonds; contents of indentures or bond resolutions; expenses of carrying out indentures.**

(a) In the discretion of the authority, any issue of revenue bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state. Such trust indenture may pledge or assign rents, revenues, and earnings to be received by the authority. Either the resolution providing for the issuance of revenue bonds or such trust indenture:

(1) May contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition of property; the construction of the project; the maintenance, operation, repair, and insurance of the project; and the custody, safeguarding, and application of all moneys;

(2) May also provide that any project shall be constructed and paid for under the supervision and approval of consulting engineers or architects employed or designated by the authority and satisfactory to the original purchasers of the bonds issued therefor;

(3) May also require that the security given by contractors and by any depository of the proceeds of the bonds or revenues or other moneys be satisfactory to such purchasers; and

(4) May also contain provisions concerning the conditions, if any, upon which additional revenue bonds may be issued.

(b) It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and to furnish such indemnifying bonds or pledge such securities as may be required by the authority. Such indenture may set forth the rights and remedies of the bondholders and of the trustees and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. In addition to the foregoing, such trust indenture may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the project affected by such indenture. (Ga. L. 1951, p. 241, § 15.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 178.

#### 20-2-566. Trustee for bond proceeds.

The authority shall, in the resolution providing for the issuance of revenue bonds or in the trust indenture, provide for the payment of the proceeds of the sale of the bonds to any officer or person who, or any agency, bank, or trust company which, shall act as trustee of such funds and shall hold and apply them to the purposes of this part, subject to such regulations as this part and such resolution or trust indenture may provide. (Ga. L. 1951, p. 241, § 16.)



## RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 178.

**20-2-567. Sinking fund.**

The revenues, rents, and earnings derived from any particular project or combined projects; all sums allocated or paid by the State Board of Education or Department of Education to the authority for the benefit of and on behalf of any county, city, or independent school district or system or its governing body for the performance of any lease contract or agreement of sale or any and all funds from any sources received by the various county boards of education, city boards of education, or governing bodies of independent school districts or systems that have entered into lease contracts or agreements of sale with the authority and paid to it in the performance of such contract or contracts; any and all revenues, rents, and earnings received by the authority, regardless of whether or not such rents, earnings, and revenues were produced by a particular project for which bonds have been issued, unless otherwise pledged and allocated; and federal funds where applicable may be pledged and allocated by the authority to the payment of the principal and interest, if any, on revenue bonds of the authority as the resolution authorizing the issuance of the bonds or the trust instrument may provide. Such funds so pledged from whatever source received may include funds received from one or more or all sources and shall be set aside at regular intervals as may be provided in the resolution or trust indenture, into a sinking fund, which shall be pledged by the authority to and charged with the payment of:

- (1) The interest, if any, upon such revenue bonds as such interest shall fall due;
- (2) The principal of the bonds as the same shall fall due;
- (3) The necessary charges of paying agents for paying principal and interest, if any; and
- (4) Any premium upon bonds retired by call or purchase as provided in Code Section 20-2-555.

The use and disposition of such sinking fund shall be subject to such covenants and regulations as may be provided in the resolution authorizing the issuance of the revenue bonds or in the trust indenture, but, except as may otherwise be provided in such resolution or trust indenture, such sinking fund shall be a fund for the benefit of all revenue bonds without distinction or priority of one over another. Subject to the provisions of the resolution authorizing the issuance of the bonds or in the trust indenture, surplus moneys in the sinking fund

may be applied to the purchase or redemption of bonds; and any such bonds so purchased or redeemed shall immediately be canceled and shall not again be issued. (Ga. L. 1951, p. 241, § 17; Ga. L. 2010, p. 1001, § 9/HB 936.)

**The 2010 amendment**, effective July 1, 2010, inserted “, if any,” in the introductory paragraph and in paragraph (1); in the introductory paragraph, in the first sentence, substituted “projects;” for “projects and”, substituted “and on behalf of any county, city, or independent school district or system” for “any political subdivision”, inserted “or agreement of sale”,

inserted “or agreements of sale”, substituted “contracts;” for “contracts or”, and substituted “allocated; and federal funds where applicable” for “allocated,” and, in the second sentence, deleted “, which pledge” following “source received” and substituted “sources and” for “sources,”; and inserted “, if any” at the end of paragraph (3).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 386.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 787.

**ALR.** — Constitutional provisions

against impairment of obligations of contract as applied to sinking funds for retirement of municipal or other public bonds, 115 ALR 220.

### 20-2-568. Remedies of bondholders, receivers, or indenture trustees.

Any holder of revenue bonds or interest coupons issued under this part, any receiver for such holders, or indenture trustee, if any, except to the extent the rights given in this part may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may either at law or in equity, by action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of this state or granted under this part or under such resolution or trust indenture and may enforce and compel performance of all duties required by this part or by resolution or trust indenture to be performed by the authority or any officer thereof, including the fixing, charging, and collecting of revenues, rents, and other charges for the use of the project or projects, and, in the event of default of the authority upon the principal and interest obligations of any revenue bond issue, shall be subrogated to each and every right, specifically including the contract rights of collecting rental or installment payments of purchase price, which the authority may possess against any contracting county, city, or independent school district or system or political subdivision. In the pursuit of his or its remedies as subrogee, such individual, receiver, or trustee may proceed either at law or in equity by action, mandamus, or other proceedings to collect any sums by such proceedings due and owing to the authority and pledged or partially pledged directly or indirectly to the benefit of the revenue bond issue of which such individual, receiver, or trustee is representative. No holder of any such

bond or receiver or indenture trustee thereof shall have the right to compel any exercise of the taxing power of the state to pay any such bond or the interest thereon or to enforce the payment thereof against any property of the state; nor shall any such bond constitute a charge, lien, or encumbrance, legal or equitable, upon the property of the state. (Ga. L. 1951, p. 241, § 18; Ga. L. 1964, p. 112, § 3; Ga. L. 1983, p. 3, § 53; Ga. L. 2010, p. 1001, § 10/HB 936.)

**The 2010 amendment**, effective July 1, 2010, substituted “rental or installment payments of purchase price, which the authority may possess against any contracting county, city, or independent school district or system or political subdivision” for “, which the authority may possess against the State Board of Education, its successors, or other contracting or leasing department, agency, or institution of the state” in the first sentence, and in the last sentence, deleted “; provided, however, that any provision of this part or

any other Act to the contrary notwithstanding, any such bondholder or receiver or indenture trustee shall have the right by appropriate legal or equitable proceedings, including, without being limited to, mandamus, to enforce compliance by the appropriate public officials with Article VII, Section IV, Paragraph III of the Constitution of Georgia; and permission is given for the institution of any such proceedings to compel the payment of lease obligations” at the end.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 250, 251.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 788.

#### 20-2-569. Refunding bonds.

The authority is authorized to provide by resolution for the issue of revenue refunding bonds of the authority for the purpose of refunding any revenue bonds issued under this part and then outstanding, together with accrued interest thereon, if any, and the premium, if any. The issuance of such revenue refunding bonds, the maturities and all other details thereof, the rights of the holders thereof, and the duties of the authority in respect to such bonds shall be governed by Code Sections 20-2-550 through 20-2-568 insofar as they may be applicable. (Ga. L. 1951, p. 241, § 19; Ga. L. 2010, p. 1001, § 11/HB 936.)

**The 2010 amendment**, effective July 1, 2010, added “, if any, and the premium, if any” at the end of the first sentence.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 236 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 738.



20-2-570. Bonds legal investments; depositing bonds.

The bonds authorized in this part are made securities in which all public officers and bodies of this state and all municipalities and all political subdivisions; all insurance companies and associations and other persons carrying on an insurance business; all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business; all administrators, guardians, executors, trustees, and other fiduciaries; and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state may properly and legally invest funds, including capital, in their control or belonging to them. The bonds are also made securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and political subdivisions for any purpose for which the deposit of the bonds or other obligations of this state is authorized. (Ga. L. 1951, p. 241, § 20; Ga. L. 2010, p. 1001, § 12/HB 936.)

The 2010 amendment, effective July 1, 2010, substituted “political subdivisions” for “municipal subdivisions” in the first and last sentences.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 9 et seq.

20-2-571. Tax exemption of authority’s property, activities, charges, and bonds.

The creation of the authority and the carrying out of its corporate purpose shall be a public purpose and in all respects for the benefit of the people of this state. The authority will be performing an essential governmental function in the exercise of the power conferred upon it by this part; and this state covenants with the holders of the bonds that the authority shall be required to pay no taxes or assessments upon any of the property acquired or leased by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation or maintenance of the buildings erected or acquired by it or any fees, revenues, rentals, or other charges for the use of such buildings or other income received by the authority and that the bonds of the authority and the income therefrom shall at all times be exempt from taxation within this state. (Ga. L. 1951, p. 241, § 21; Ga. L. 2010, p. 1001, § 13/HB 936.)

**The 2010 amendment**, effective July 1, 2010, in the last sentence, inserted “revenues,” near the middle, and substituted “this state” for “the state” at the end.

### JUDICIAL DECISIONS

**Ga. L. 1951, p. 241, § 21 is constitutional** in that it does not constitute a donation or a gratuity in violation of Ga. Const. 1945, Art. VII, Sec. I, Para. II (see now Ga. Const. 1983, Art. III, Sec. VI, Para. VI), nor offend Ga. Const. 1945, Art. VII, Sec. I, Para. IV (see now Ga. Const.

1983, Art. VII, Sec. I, Para. I), which declares that all laws exempting property from taxation other than property therein enumerated are void. *Sheffield v. State Sch. Bldg. Auth.*, 208 Ga. 575, 68 S.E.2d 590 (1952).

### OPINIONS OF THE ATTORNEY GENERAL

**No fees assessed upon authority.** — This section certainly indicates the General Assembly did not contemplate assessment of any fees, of whatever nature,

directly or indirectly, upon the authority. 1963-65 Op. Att’y Gen. p. 493 (see O.C.G.A. § 20-2-571).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 71 Am. Jur. 2d, State and Local Taxation, § 346.

**C.J.S.** — 84 C.J.S., Taxation, § 251.

**ALR.** — Bond or warrant of governmental subdivision as subject of taxation or exemption, 44 ALR 510.

### 20-2-572. Procedure for validating bonds.

Bonds of the authority shall be confirmed and validated in accordance with the procedure of Article 3 of Chapter 82 of Title 36. The petition for validation shall make the authority party defendant and shall also make party defendant to such action any political subdivision or county, city, or independent school district or system which has contracted with the authority for the purchase or use of any building, structure, or facility for which bonds have been issued and sought to be validated; and such parties shall be required to show cause, if any, why the contract or contracts and the terms and conditions thereof should not be inquired into by the court, the validity of the terms thereof determined, the matters and conditions imposed on the contracting parties to be performed, and all such undertakings adjudicated as security for the payment of any such bonds of the authority. In the event no appeal is taken or if taken and the judgment is affirmed by the proper appellate court of this state, the judgment of the superior court so confirming and validating the issuance of the bonds shall be forever conclusive upon the validity of the bonds against the authority issuing them and against all parties to such proceedings. (Ga. L. 1951, p. 241, § 23; Ga. L. 2010, p. 1001, § 14/HB 936.)

**The 2010 amendment**, effective July 1, 2010, in the second sentence, deleted “the State Board of Education and” preceding “any political subdivision”, in-

served "or county, city, or independent school district or system", inserted "purchase or" near the middle, and substituted

"contracting parties" for "state board" near the end.

### JUDICIAL DECISIONS

**Judgment validating revenue certificates conclusive against municipality and citizens.** — Judgment of the superior court validating revenue certificates under former Code 1933, § 87-305, unexcepted to, or affirmed on review, was conclusive against the municipality and

the citizens of the municipality upon all questions, including the constitutionality of the statute under which the proceedings were had. *Cox v. Georgia Educ. Auth.*, 225 Ga. 542, 170 S.E.2d 240 (1969).

**Cited in** *Steadham v. State*, 224 Ga. 78, 159 S.E.2d 397 (1968).

### RESEARCH REFERENCES

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 763, 784.

## 20-2-573. Venue and jurisdiction of actions to enforce rights or validate bonds.

Any action to protect or enforce any rights under this part shall be brought in the Superior Court of Fulton County; and any action pertaining to validation of any bonds issued under this part shall likewise be brought in such court, which shall have exclusive, original jurisdiction of such actions. (Ga. L. 1951, p. 241, § 22.)

### JUDICIAL DECISIONS

**Cited in** *Steadham v. State*, 224 Ga. 78, 159 S.E.2d 397 (1968); *Davis v. Ware County Bd. of Educ.*, 227 Ga. 41, 178

S.E.2d 857 (1970); *M.A.R.T.A. v. McCain*, 135 Ga. App. 460, 218 S.E.2d 122 (1975).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 77 Am. Jur. 2d, Venue, § 4.

**C.J.S.** — 92A C.J.S., Venue, §§ 2, 76.

## 20-2-574. Interests of bondholders protected.

While any of the bonds issued by the authority remain outstanding, the powers, duties, or existence of the authority or of its officers, employees, or agents or of the various county boards of education, city boards of education, or governing bodies of independent or quasi-independent districts or systems shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such bonds, nor will the state itself so compete with the authority. This part shall be for the benefit of the state, the authority, and the holders of any such bonds and, upon the issuance of



bonds under this part, shall constitute a contract with the holders of such bonds. (Ga. L. 1951, p. 241, § 24.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 250, 251.

**C.J.S.** — 81A C.J.S., States, § 262.

#### 20-2-575. Acceptance of grants and contributions from federal and other sources.

The authority, in addition to the moneys which may be received from the sale of revenue bonds and from the collection of revenues, rents, and earnings derived under this part, shall have authority to accept from any federal agency grants for or in aid of the construction of any project or for the payment of bond and to receive and accept contributions from any source of either money or property or other things of value to be held, used, and applied only for the purpose for which such grants or contributions may be made. (Ga. L. 1951, p. 241, § 25.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 114, 357 et seq.

78A C.J.S., Schools and School Districts, §§ 726, 730 et seq.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 507 et seq.

#### 20-2-576. Moneys received deemed trust funds.

All moneys received pursuant to this part, whether as proceeds from the sale of revenue bonds, as grants or other contributions, or as revenues, rents, and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this part. (Ga. L. 1951, p. 241, § 26.)

#### JUDICIAL DECISIONS

**Cited in Georgia Educ. Auth. v. Davis,** 227 Ga. 36, 178 S.E.2d 853 (1970).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Funds, §§ 2, 5, 6, 42.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 729.

### **20-2-577. Fixing rentals, installment payments, and charges for use of projects.**

The authority is authorized to fix rentals, installment payments of purchase price, and other charges which the various county boards of education, city boards of education, or governing bodies of independent districts or systems shall pay to the authority for the use or purchase of each project or part thereof or combination of projects, to charge and collect them, and to lease or sell and make contracts with the various county, city, or independent school districts or systems for the use or purchase by any county, city, or independent school districts or systems of any project or part thereof. Such rentals, installment payments of purchase price, and other charges shall be so fixed and adjusted in relation to their total amount from the project or projects for which a single issue of revenue bonds is issued so as to provide a fund sufficient with other revenues of such project or projects, if any, to pay:

(1) The cost of maintaining, repairing, and operating the project or projects, including reserves for extraordinary repairs and insurance and other reserves required by the resolution or trust indentures, unless such reserves shall be otherwise provided for, shall be deemed to include the expenses incurred by the authority on account of the project or projects for water, light, sewer, and other services furnished by other facilities at such institution; and

(2) The principal of the revenue bonds and the interest thereon, if any, as they shall become due. (Ga. L. 1951, p. 241, § 27; Ga. L. 2010, p. 1001, § 15/HB 936.)

**The 2010 amendment**, effective July 1, 2010, in the introductory paragraph, in the first and second sentences, inserted “, installment payments of purchase price,” in the first sentence, inserted “or purchase” and “or sell” near the middle, and substituted “various county, city, or independent school districts or systems for the use or purchase by any county, city, or

independent school districts or systems” for “various counties with respect to the use by any institution or unit under its control” and, in the second sentence, substituted “relation” for “respect” and inserted “so”; in paragraph (1), substituted “reserves” for “cost” and deleted “which cost” preceding “shall be deemed”; and inserted “, if any,” in paragraph (2).

### **RESEARCH REFERENCES**

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 78.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 560 et seq.

### **20-2-578. Authority of state and other boards of education to bargain, sell, transfer, convey, rent, and lease property to authority.**

In addition to the authority granted in this part or otherwise provided by law, express authority and power is given to the State

Board of Education, county boards of education, city boards of education, or governing bodies of independent or quasi-independent districts or systems to bargain, sell, transfer, convey, rent, and lease to the authority any property needed or required by the authority to carry out the purposes of this part, together with all buildings and improvements thereon. (Ga. L. 1951, p. 241, § 28.)

#### JUDICIAL DECISIONS

**Cited** in Georgia Educ. Auth. v. Davis,  
227 Ga. 36, 178 S.E.2d 853 (1970).

#### RESEARCH REFERENCES

**C.J.S.** — 78 C.J.S., Schools and School  
Districts, § 507 et seq.

#### **20-2-579. Rules and regulations for operation of projects.**

It shall be the duty of the authority to prescribe rules and regulations for the operation of each project or combination of projects constructed under this part, including rules and regulations to ensure maximum use or occupancy of each such project. (Ga. L. 1951, p. 241, § 29.)

#### **20-2-580. Power to issue revenue bonds not affected.**

This part does not in any way take from the various counties or other governmental units or agencies of the state the authority to issue revenue bonds for a particular purpose. (Ga. L. 1951, p. 241, § 33.)

#### **20-2-581. Part supplemental and additional to other laws.**

This part shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby, shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing. (Ga. L. 1951, p. 241, § 30.)

#### **20-2-582. Part to be liberally construed.**

This part, being for the welfare of the state and its inhabitants, shall be liberally construed to effect its purposes. (Ga. L. 1951, p. 241, § 31.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools,  
§ 9.



**ARTICLE 12**

**LEASING PUBLIC SCHOOL PROPERTY FOR PRIVATE PURPOSES**

**Law reviews.** — For article, “Education Law,” see 53 Mercer L. Rev. 281 (2001). For article, “Local Government Law,” see 53 Mercer L. Rev. 389 (2001).

**20-2-600. Leases of 50 years or less authorized.**

The various counties, cities, municipalities, county boards of education, city boards of education, and governing bodies of independent school districts or systems of this state shall have authority to lease any schoolhouse or other school property that it has determined is no longer needed for school purposes to any person, group of persons, or corporation, provided that the lease shall be for a period not longer than 50 years. (Ga. L. 1956, p. 10, § 1; Ga. L. 1986, p. 38, § 1; Ga. L. 1987, p. 3, § 20; Ga. L. 2001, p. 1247, § 1.)

**OPINIONS OF THE ATTORNEY GENERAL**

**Distinction between lease under O.C.G.A. § 20-2-600 and permit under O.C.G.A. § 20-2-520.** — There is one significant distinction between the situation of a lease not exceeding five (now fifteen) years under Ga. L. 1951, p. 241, § 28 (with compensation involved) and a mere permit under former Code 1933, § 32-909 (no monetary consideration involved). When the local board enters into a lease agreement such as the lease of a particular classroom to a private teacher during specified hours, the lease will be binding upon the board during the term of the lease even though it might to some extent interfere with the use of the classroom for school purposes; when, however, there is only a “free of charge” permission to teach private lessons, such use by a private teacher for private lessons could become illegal if the use interfered with the primary use of the school building or any room or part thereof for public education purposes. 1963-65 Op. Att’y Gen. p. 401.

**Board may not lease unused school facility to state college.** — Insofar as general state law is concerned, a county board of education would be legally safe in leasing out an unused school facility to a college of this state for a period of up to five years. 1976 Op. Att’y Gen. No. U76-2.

**Board may not lease unused school facility to private citizens.** — County board of education has no authority to lease school property no longer needed for school purposes to private citizens to be used as a recreation center. 1958-59 Op. Att’y Gen. p. 98.

**When board acts beyond jurisdiction, members subject to individual liability.** — County board of education, if acting beyond the scope of the board’s lawful jurisdiction in leasing school buildings, might thereby subject the board’s members to individual liability in case someone is hurt or an accident happens on this property. 1958-59 Op. Att’y Gen. p. 98.

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 102.  
**C.J.S.** — 78 C.J.S., Schools and School Districts, § 510 et seq.

**ALR.** — Zoning regulations as applied to private and parochial schools below the college level, 74 ALR3d 14.

**20-2-601. Article applicable to all public school systems.**

This article shall apply to all public school systems in this state, including those maintained and operated by counties and cities and independent local systems. (Ga. L. 1956, p. 10, § 2; Ga. L. 1983, p. 3, § 53.)

**ARTICLE 13****SUSPENDING AND REOPENING LOCAL SCHOOL SYSTEMS****20-2-620 through 20-2-627.**

Repealed by Ga. L. 1990, p. 1344, § 1, effective July 1, 1990.

**Editor's notes.** — This article, which consisted of Code Sections 20-2-620 through 20-2-627, providing for suspending and reopening local school systems, was based on Ga. L. 1961, p. 31, §§ 1-7, 9; Ga. L. 1983, p. 3, § 53; Ga. L. 1985, p. 149, § 20.

**ARTICLE 14****EDUCATION GRANTS****20-2-640 through 20-2-650.**

Reserved. Repealed by Ga. L. 2005, p. 318, § 1/HB 27, effective July 1, 2005.

**Editor's notes.** — This article was based on Ga. L. 1961, p. 35, §§ 1-3, 5, 6; Ga. L. 1962, p. 552, § 1; Ga. L. 1963, p. 514, §§ 1-9; Ga. L. 1972, p. 1015, § 206; Ga. L. 1983, p. 3, § 53; Ga. L. 1992, p. 6, § 20.

**ARTICLE 15****SCHOOL CENSUS****20-2-660.**

Reserved. Repealed by Ga. L. 2012, p. 358, § 29/HB 706, effective July 1, 2012.

**Editor's notes.** — This article was based on Ga. L. 1919, p. 288, §§ 71, 72; Code 1933, §§ 32-1601, 32-1602; Ga. L. 1945, p. 210, § 1; Ga. L. 1945, p. 441, § 1; Ga. L. 1969, p. 838, § 3.

ARTICLE 16

STUDENTS

**Cross references.** — Prohibition against possession of alcoholic beverages upon grounds or within structures of public schools, § 3-3-21.1.

**Administrative rules and regulations.** — Regional educational services, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia

Department of Education, Chapter 160-5-1.

**Law reviews.** — For article, “Contrasting Concurrences of Clarence Thomas: Deploying Originalism and Paternalism in Commercial and Student Speech Cases,” see 26 Ga. St. U. L. Rev. 321 (2010).

RESEARCH REFERENCES

**Am. Jur. Proof of Facts.** — Teacher’s Failure to Supervise Students, 4 POF2d 87.

Proof that School Board Improperly Expelled Student from School, 55 POF3d 313.

PART 1

SCHOOL ATTENDANCE

Subpart 1

Transfer Students

**Editor’s notes.** — Ga. L. 1985, p. 1657, § 2, effective July 1, 1986, repealed this former subpart, pertaining to right to admission and tuition, which consisted of Code Sections 20-2-670 (concerning discrimination in admission) and 20-2-671

(concerning tuition and admission of World War II veterans), and which was based on Ga. L. 1919, p. 288, § 110; Code 1933, § 32-937; Ga. L. 1945, p. 397, § 2; Ga. L. 1961, p. 35, § 7; Ga. L. 1961, p. 201, § 1; Ga. L. 1970, p. 89, § 1.

**20-2-670. Requirements for transferring students beyond sixth grade; conditional admission; compliance.**

(a) A transferring student applying for admission to a grade higher than the sixth grade shall as a prerequisite to admission present a certified copy of his or her academic transcript and disciplinary record from the school previously attended.

(b) In lieu of complying with the provision of subsection (a) of this Code section, a transferring student may be admitted on a conditional basis if he or she and his or her parent or legal guardian executes a document providing the name and address of the school last attended and authorizing the release of all academic and disciplinary records to the school administration. The parent or guardian shall be notified of the transfer of such records and shall, upon written request made within ten days of such notice, be entitled to receive a copy of such records. Within five days of the receipt of a copy of such records, the



parent or guardian may make a written request for and shall be entitled to a hearing before the principal of the school or his or her designee which is the custodian of such records for the purpose of challenging the content of the records. The student or his or her parent or legal guardian shall also disclose on the same document as the release whether the child has ever been adjudicated guilty of the commission of a designated felony act as defined in Code Section 15-11-63 and, if so, the date of such adjudication, the offense committed, the jurisdiction in which such adjudication was made, and the sentence imposed. Any form document to authorize the release of records which is provided by a school to a transferring student or such student's parent or legal guardian shall include a list of designated felony acts. The student or his or her parent or legal guardian shall also disclose on the document whether the student is currently serving a suspension or expulsion from another school, the reason for such discipline, and the term of such discipline. If a student so conditionally admitted is found to be ineligible for enrollment pursuant to the provisions of Code Section 20-2-751.2, or is subsequently found to be so ineligible, he or she shall be dismissed from enrollment until such time as he or she becomes so eligible.

(c) Every school system in this state shall be obligated to provide complete information to a requesting school pursuant to subsection (b) of this Code section within ten days of receipt of such request. (Code 1981, § 20-2-670, enacted by Ga. L. 1997, p. 1061, § 1; Ga. L. 1998, p. 128, § 20; Ga. L. 2000, p. 20, § 15.)

**20-2-671. Transfer students who have committed felony acts; disclosure of act.**

If any school administrator determines from the information obtained pursuant to Code Section 15-11-63 or 20-2-670 or from any other source that a student has committed a designated felony act, such administrator shall so inform all teachers to whom the student is assigned that they may review the information in the student's file provided pursuant to subsection (b) of Code Section 20-2-670 received from other schools or from the juvenile courts. Such information shall be kept confidential. (Code 1981, § 20-2-671, enacted by Ga. L. 1997, p. 1061, § 1; Ga. L. 2000, p. 20, § 16.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools,  
§ 266 et seq., 271.

## Subpart 2

## Compulsory Attendance

**Cross references.** — Home Education Week, § 1-4-14.

**Administrative rules and regulations.** — Student attendance, Official

Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Regional Education Services, Sec. 160-5-1-10.

## OPINIONS OF THE ATTORNEY GENERAL

**Duty of local boards to administer provisions in cooperation with other government agencies.** — Law does not shift the responsibility for locating an absent or runaway child from the parent to local school officials, but simply provides that it shall be the duty of the county or independent school system board of education to administer the compulsory attendance law and to secure the law's enforcement in cooperation with other state and county agencies. 1978 Op. Att'y Gen. No. 78-48.

**Provisions not violated by assigning children to job centers in other jurisdictions.** — Assigning of 14- and 15-year-old children who are residents of Georgia to Job Corps Centers in other jurisdictions would not offend the compulsory school attendance laws of the State of Georgia. 1968 Op. Att'y Gen. No. 68-173.

**Parents refusing to have children vaccinated.** — Parents who refuse to

have their children vaccinated for smallpox, by reason of which the child is prevented from attending school, would seem to place themselves in jeopardy as regards the public school attendance law, and the fact that the parents refuse to allow the child to be vaccinated because of religious beliefs would not serve as an excuse for a violation of the attendance law. 1950-51 Op. Att'y Gen. p. 47.

**Children absent illegally from school.** — Ga. L. 1945, p. 343, § 11 provides that should any child absent himself or herself from school, the visiting teacher and attendance officer shall give written notice of the child's absence from school to the parent or guardian, and if the delinquency of the child is not corrected, the teacher and attendance officer should report the situation to the juvenile, superior, city, or other court having jurisdiction of the delinquent child. 1952-53 Op. Att'y Gen. p. 77.

## RESEARCH REFERENCES

**ALR.** — Regulation forbidding pupils to leave school grounds during school hours, 32 ALR 1342; 48 ALR 659.

Schools: extent of legislative power with respect to attendance and curriculum, 53 ALR 832.

Religious beliefs of parents as defense to prosecution for failure to comply with compulsory education law, 3 ALR2d 1401.

## 20-2-690. "Educational entities" listed; requirements for private schools and home study programs.

(a) This subpart recognizes the existence of public schools, private schools, and home study programs as educational entities.

(b) As used in this subpart, the term "private school" means an institution meeting the following criteria or requirements:

(1) The primary purpose of the institution is to provide education or, if the primary purpose of the institution is religious in nature, the institution shall provide the basic academic educational program specified in paragraph (4) of this subsection;

(2) The institution is privately controlled and operates on a continuing basis;

(3) The institution provides instruction each 12 months for the equivalent of 180 school days of education with each school day consisting of at least four and one-half school hours;

(4) The institution provides a basic academic educational program which includes, but is not limited to, reading, language arts, mathematics, social studies, and science;

(5) Within 30 days after the beginning of each school year, it shall be the duty of the administrator of each private school to provide to the school superintendent of each local public school district which has residents enrolled in the private school a list of the name, age, and residence of each resident so enrolled. At the end of each school month, it shall be the duty of the administrator of each private school to notify the school superintendent of each local public school district of the name, age, and residence of each student residing in the public school district who enrolls or terminates enrollment at the private school during the immediately preceding school month. Such records shall indicate when attendance has been suspended and the grounds for such suspension. Enrollment records and reports shall not be used for any purpose except providing necessary enrollment information, except with the permission of the parent or guardian of a child, pursuant to the subpoena of a court of competent jurisdiction, or for verification of attendance by the Department of Public Safety for the purposes set forth in subsection (a.1) of Code Section 40-5-22; and

(6) Any building used by the institution for private school purposes meets all health and safety standards established under state law and local ordinances.

(c) Parents or guardians may teach their children at home in a home study program which meets the following requirements:

(1) The parent, parents, or guardian must submit within 30 days after the establishment of a home study program and by September 1 annually thereafter a declaration of intent to utilize a home study program to the Department of Education, which may provide for electronic submittal of such declaration of intent;

(2) The declaration shall include a list of the names and ages of the students who are enrolled in the home study program, the address where the home study program is located, and a statement of the 12



month period that is to be considered the school year for that home study program. Enrollment records and reports shall not be used for any purpose except providing necessary enrollment information, except with the permission of the parent or guardian of a child, pursuant to the subpoena of a court of competent jurisdiction, or for verification of attendance by the Department of Public Safety for the purposes set forth in subsection (a.1) of Code Section 40-5-22;

(3) Parents or guardians may teach only their own children in the home study program, provided the teaching parent or guardian possesses at least a high school diploma or a general educational development diploma, but the parents or guardians may employ a tutor who holds a high school diploma or a general educational development diploma to teach such children;

(4) The home study program shall provide a basic academic educational program which includes, but is not limited to, reading, language arts, mathematics, social studies, and science;

(5) The home study program must provide instruction each 12 months to home study students equivalent to 180 school days of education with each school day consisting of at least four and one-half school hours unless the child is physically unable to comply with the rule provided for in this paragraph;

(6) Attendance records for the home study program shall be kept and shall be submitted annually to the Department of Education and additionally, in accordance with department regulations for purposes of verification of attendance by the Department of Public Safety, for the purposes set forth in subsection (a.1) of Code Section 40-5-22. The department may provide for electronic submittal of such records. Attendance records and reports shall not be used for any purpose except providing necessary attendance information, except with the permission of the parent or guardian of a child, pursuant to the subpoena of a court of competent jurisdiction, or for verification of attendance by the Department of Public Safety for the purposes set forth in subsection (a.1) of Code Section 40-5-22;

(7) Students in home study programs shall be subject to an appropriate nationally standardized testing program administered in consultation with a person trained in the administration and interpretation of norm reference tests to evaluate their educational progress at least every three years beginning at the end of the third grade and records of such tests and scores shall be retained but shall not be required to be submitted to public educational authorities; and

(8) The home study program instructor shall write an annual progress assessment report which shall include the instructor's individualized assessment of the student's academic progress in each

of the subject areas specified in paragraph (4) of this subsection, and such progress reports shall be retained by the parent, parents, or guardian of children in the home study program for a period of at least three years.

(d) Any person who operates a private school without complying with the requirements of subsection (b) of this Code section or any person who operates a home study program without complying with the requirements of subsection (c) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$100.00.

(e) The State Board of Education shall devise, adopt, and make available to local school superintendents, who shall in turn make available to administrators of private schools and parents or guardians with children in home study programs, such printed forms and procedures as may be reasonably necessary to carry out efficiently the reporting provisions of this Code section, but such printed forms and procedures shall not be inconsistent with or exceed the requirements of this Code section. (Code 1981, § 20-2-690, enacted by Ga. L. 1984, p. 1266, § 1; Ga. L. 1985, p. 149, § 20; Ga. L. 1986, p. 10, § 20; Ga. L. 1997, p. 760, § 4; Ga. L. 2001, p. 4, § 20; Ga. L. 2004, p. 945, § 1; Ga. L. 2012, p. 358, § 30/HB 706; Ga. L. 2012, p. 648, § 1/HB 39.)

**The 2012 amendments.** — The first 2012 amendment, effective July 1, 2012, substituted “Department of Education, which may provide for electronic submittal of such declaration of intent” for “superintendent of schools of the local school district in which the home study program is located” in paragraph (c)(1); and substituted “Department of Education, which may provide for electronic submittal of such declaration of intent” for “superintendent of schools of the local school district in which the home study program is located” at the end of paragraph (c)(6). The second 2012 amendment, effective July 1, 2012, in subsection (c), substituted “Department of Education, which may provide for electronic submittal of such declaration of intent” for “superintendent of schools of the local school district in which the home study program is located” in paragraph (c)(1); and substituted the present provisions of the first sentence of paragraph (c)(6) for the former provisions, which read: “Attendance records for the home study program shall be kept and shall be submitted at the end of each

month to the school superintendent of the local school district in which the home study program is located.” See editor’s note for applicability. See the Code Commission note regarding the effect of these amendments.

**Cross references.** — Characterization as “unruly” of child who is habitually truant from school, § 15-11-2(12)(A). Disposition of child found by juvenile court to be unruly, § 15-11-67.

**Code Commission notes.** — Pursuant to Code Section 28-9-3, in 2012, the amendment of paragraph (c)(6) of this Code section by Ga. L. 2012, p. 358, § 30/HB 706, was treated as impliedly repealed and superseded by Ga. L. 2012, p. 648, § 1/HB 39, due to irreconcilable conflict. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

**Editor’s notes.** — Ga. L. 1984, p. 1266, § 1 repealed former Code Section 20-2-690 and substituted in lieu thereof present Code Sections 20-2-690 and 20-2-690.1. Present Code Section 20-2-690.1 is essentially a continuation of

the provisions of former Code Section 20-2-690. See the editor's notes to Code Section 20-2-690.1.

Ga. L. 1997, p. 760, § 27(a), not codified by the General Assembly, provides: "Except as otherwise provided in subsection (b) of this section, this Act shall become effective on July 1, 1997, and shall apply to offenses committed on or after that date and, except for subsection (b.1) of Code Section 40-5-67.1 as enacted by this Act, this Act shall not apply to offenses committed prior to that date."

Ga. L. 2012, p. 648, § 6/HB 39, not

codified by the General Assembly, provides that the amendment by that Act shall apply beginning with school year 2012-2013.

**Law reviews.** — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U. L. Rev. 203 (1997).

For note, "A Constitutional Analysis of Compulsory School Attendance Laws in the Southeast: Do They Unlawfully Interfere with Alternatives to Public Education?," see 8 Ga. St. U. L. Rev. 457 (1992).

## OPINIONS OF THE ATTORNEY GENERAL

**Requiring parents to produce evidence of compliance.** — While responsibility for the enforcement of the statutory requirements pertaining to home study programs rests in large measure upon local school superintendents, a local school superintendent does not have the power to issue subpoenas, require the production of documents, or to otherwise require parents to affirmatively "produce evidence" of the parents' continuing compliance with the law in the operation of home study programs, and while the local

school superintendent is free to "request" such materials and statements, the superintendent has no compulsory process which can be invoked to secure such information other than in connection with a pending legal proceeding. 1986 Op. Att'y Gen. No. U86-19.

**Fingerprinting of offenders.** — Offense covered by O.C.G.A. § 20-2-690(d) is not currently designated as an offense requiring fingerprinting. 1997 Op. Att'y Gen. No. 97-330.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 42 Am. Jur. 2d, Infants, § 14. 68 Am. Jur. 2d, Schools, § 266 et seq., 271.

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 1017, 1019, 1022, 1023, 1026.

**ALR.** — Schools: extent of legislative power with respect to attendance and curriculum, 39 ALR 477; 53 ALR 832.

Religious beliefs of parents as defense to prosecution for failure to comply with compulsory education law, 3 ALR2d 1401.

What constitutes a private, parochial,

or denominational school within statute making attendance at such school a compliance with compulsory school attendance law, 65 ALR3d 1222.

Validity of local or state denial of public school courses or activities to private or parochial school students, 43 ALR4th 776.

Validity of state or local government regulation requiring private school to report attendance and similar information to government—post-Yoder cases, 8 ALR5th 875.

## 20-2-690.1. Mandatory education for children between ages six and 16.

(a) Mandatory attendance in a public school, private school, or home school program shall be required for children between their sixth and sixteenth birthdays. Such mandatory attendance shall not be required



where the child has successfully completed all requirements for a high school diploma.

(b) Every parent, guardian, or other person residing within this state having control or charge of any child or children during the ages of mandatory attendance as required in subsection (a) of this Code section shall enroll and send such child or children to a public school, a private school, or a home study program that meets the requirements for a public school, a private school, or a home study program; and such child shall be responsible for enrolling in and attending a public school, a private school, or a home study program that meets the requirements for a public school, a private school, or a home study program under such penalty for noncompliance with this subsection as is provided in Chapter 11 of Title 15, unless the child's failure to enroll and attend is caused by the child's parent, guardian, or other person, in which case the parent, guardian, or other person alone shall be responsible; provided, however, that tests and physical exams for military service and the National Guard and such other approved absences shall be excused absences. The requirements of this subsection shall apply to a child during the ages of mandatory attendance as required in subsection (a) of this Code section who has been assigned by a local board of education or its delegate to attend an alternative public school program established by that local board of education, including an alternative public school program provided for in Code Section 20-2-154.1, regardless of whether such child has been suspended or expelled from another public school program by that local board of education or its delegate, and to the parent, guardian, or other person residing in this state who has control or charge of such child. Nothing in this Code section shall be construed to require a local board of education or its delegate to assign a child to attend an alternative public school program rather than suspending or expelling the child.

(c) Any parent, guardian, or other person residing in this state who has control or charge of a child or children and who violates this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than \$25.00 and not greater than \$100.00, imprisonment not to exceed 30 days, community service, or any combination of such penalties, at the discretion of the court having jurisdiction. Each day's absence from school in violation of this part after the child's school system notifies the parent, guardian, or other person who has control or charge of a child of five unexcused days of absence for a child shall constitute a separate offense. After two reasonable attempts to notify the parent, guardian, or other person who has control or charge of a child of five unexcused days of absence without response, the school system shall send a notice to such parent, guardian, or other person by certified mail, return receipt requested, or first-class mail. Prior to any action to commence judicial proceedings to

impose a penalty for violating this subsection on a parent, guardian, or other person residing in this state who has control or charge of a child or children, a school system shall send a notice to such parent, guardian, or other person by certified mail, return receipt requested. Public schools shall provide to the parent, guardian, or other person having control or charge of each child enrolled in public school a written summary of possible consequences and penalties for failing to comply with compulsory attendance under this Code section for children and their parents, guardians, or other persons having control or charge of children. The parent, guardian, or other person who has control or charge of a child or children shall sign a statement indicating receipt of such written statement of possible consequences and penalties; children who are age ten years or older by September 1 shall sign a statement indicating receipt of such written statement of possible consequences and penalties. After two reasonable attempts by the school to secure such signature or signatures, the school shall be considered to be in compliance with this subsection if it sends a copy of the statement, via certified mail, return receipt requested, or first-class mail, to such parent, guardian, or other person who has control or charge of a child or children. Public schools shall retain signed copies of statements through the end of the school year.

(d) Local school superintendents in the case of private schools, the Department of Education in the case of home study programs, and visiting teachers and attendance officers in the case of public schools shall have authority and it shall be their duty to file proceedings in court to enforce this subpart. The Department of Education shall coordinate with local school superintendents with respect to attendance records and notification for students in home study programs.

(e) An unemancipated minor who is older than the age of mandatory attendance as required in subsection (a) of this Code section who has not completed all requirements for a high school diploma who wishes to withdraw from school shall have the written permission of his or her parent or legal guardian prior to withdrawing. Prior to accepting such permission, the school principal or designee shall convene a conference with the child and parent or legal guardian within two school days of receiving notice of the intent of the child to withdraw from school. The principal or designee shall make a reasonable attempt to share with the student and parent or guardian the educational options available, including the opportunity to pursue a general educational development (GED) diploma and the consequences of not having earned a high school diploma, including lower lifetime earnings, fewer jobs for which the student will be qualified, and the inability to avail oneself of higher educational opportunities. Every local board of education shall adopt a policy on the process of voluntary withdrawal of unemancipated minors who are older than the mandatory attendance age. The policy shall be



filed with the Department of Education no later than January 1, 2007. The Department of Education shall provide annually to all local school superintendents model forms for the parent or guardian signature requirement contained in this subsection and updated information from reliable sources relating to the consequences of withdrawing from school without completing all requirements for a high school diploma. Such form shall include information relating to the opportunity to pursue a general educational development (GED) diploma and the consequences of not having earned a high school diploma, including lower lifetime earnings, fewer jobs for which the student will be qualified, and the inability to avail oneself of higher educational opportunities. Each local school superintendent shall provide such forms and information to all of its principals of schools serving grades six through twelve for the principals to use during the required conference with the child and parent or legal guardian. (Ga. L. 1945, p. 343, §§ 1, 10; Ga. L. 1969, p. 682, § 1; Ga. L. 1971, p. 264, § 1; Code 1981, § 20-2-690; Ga. L. 1983, p. 3, § 16; Code 1981, § 20-2-690.1, enacted by Ga. L. 1984, p. 1266, § 1; Ga. L. 2000, p. 618, § 62; Ga. L. 2000, p. 1159, § 2; Ga. L. 2004, p. 107, § 10; Ga. L. 2006, p. 851, § 1/SB 413; Ga. L. 2012, p. 358, § 31/HB 706; Ga. L. 2012, p. 648, §§ 2, 3/HB 39.)

**The 2012 amendments.** — The first 2012 amendment, effective July 1, 2012, substituted “, the Department of Education in the case of home study programs,” for “or home study programs” in the middle of subsection (d). The second 2012 amendment, effective July 1, 2012, in subsection (c), in the first sentence, substituted “violates” for “shall violate” and inserted “of”, in the third sentence, added “, or first-class mail” at the end, added the fourth sentence, and, in the seventh sentence, inserted “or first-class mail”, inserted “or” preceding “other person”, and deleted a comma following “child”; and added the second sentence of subsection (d). See editor’s note for applicability.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2000, “Code Section 20-2-154.1” was substituted for “Code Section 20-2-769” in subsection (a) (now subsection (b)).

**Editor’s notes.** — Ga. L. 1984, p. 1266, § 1 repealed former Code Section 20-2-690 and substituted in lieu thereof present Code Sections 20-2-690 and 20-2-690.1. In light of the similarity of the provisions, present Code Section

20-2-690.1 is being treated as a continuation of former Code Section 20-2-690. (See history cite to this Code section.)

Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

Ga. L. 2000, p. 1159, § 3, not codified by the General Assembly, makes subsection (a) (now subsection (b)) of this Code section applicable to offenses committed on or after July 1, 2000.

Ga. L. 2012, p. 648, § 6/HB 39, not codified by the General Assembly, provides that the amendment by that Act shall apply beginning with school year 2012-2013.

**Law reviews.** — For article recommending more consistency in age requirements of laws pertaining to the welfare of minors, see 6 Ga. St. B.J. 189 (1969). For article on 2006 amendment of this Code section, see 23 Ga. St. U. L. Rev. 129 (2006).

For note discussing Georgia legislation governing the indenture of children and the practice of child indenture within the state, see 15 J. Pub. L. 349 (1966).



## JUDICIAL DECISIONS

**Former section was unconstitutional vague,** because the section was not sufficiently definite to provide a person of ordinary intelligence, who desires to avoid the section's penalties, fair notice of what constitutes a "private school." Furthermore, the section violated a second due process value in that the section impermissibly delegated to local law enforcement officials, judges, and juries the policy decision of what constitutes a "private school." *Roemhild v. State*, 251 Ga. 569, 308 S.E.2d 154 (1983) (decided prior to enactment of present Code Section 20-2-690 by Ga. L. 1984, p. 1266, § 1; see the Editor's notes above).

**Parents obligated to send children to school under rules fixed by authorities.** — Ga. L. 1946, p. 206 imposes upon the parents of school age children the duty of sending their children to school and upon the school authorities the duty of fixing the rules and regulations under which the children shall attend. *Anderson v. State*, 84 Ga. App. 259, 65 S.E.2d 848 (1951).

**When parents refuse to have children immunized.** — If parents fail and refuse to have their children immunized against certain contagious diseases, which is required as a prerequisite to their attendance, and by reason of this refusal the children are sent home by their teachers, this would be a refusal by the parents to enroll and send their children to school and the parents would be guilty of violating the law. *Anderson v. State*, 84 Ga. App. 259, 65 S.E.2d 848 (1951).

**Children deprived based on truancy.** — Evidence was sufficient to support the juvenile court's findings that the parents' children were deprived due to educational neglect as evidenced by the children's truancy, the home was unsafe with pill bottles laying around and a nail gun under the sink, and the parents' drug abuse. In *The Interest of J.C.*, 264 Ga. App. 598, 591 S.E.2d 475 (2003).

**Foster children.** — O.C.G.A. §§ 15-11-13, 15-11-58, 20-2-690.1 and 49-5-12 set out in clear detail the rights and services to which foster children are

entitled and, as a result, the federal statutory provisions (Title IV-B and IV-E of the Social Security Act, 42 U.S.C. § 670) in question are not too vague and amorphous to be enforced by the judiciary and each of the state statutes at issue impose specific duties on the state defendants; thus, the federal regulatory scheme embodied in the Child and Family Services Review process does not relieve the state defendants of the defendants' obligation to fulfill the defendants' statutory duties to plaintiff foster children, nor does the statute provide a legal excuse for the defendants failure to do so. *Kenny A. v. Perdue*, No. 1:02-cv-1686-MHS, 2004 U.S. Dist. LEXIS 27025 (N.D. Ga. Dec. 11, 2004).

**Permanent expulsion of a student for disciplinary reasons** was not contrary to law since the constitutional right to free public education may be limited and the applicable statute, O.C.G.A. § 20-2-751, does not prohibit permanent expulsion; further, such expulsion does not conflict with or violate O.C.G.A. § 20-2-690.1. *D.B. v. Clarke County Bd. of Educ.*, 220 Ga. App. 330, 469 S.E.2d 438 (1996).

**Private cause of action.** — Following factors are relevant in determining whether a private remedy is implicit in a statute not expressly providing one: first, is the plaintiff one of the class for whose special benefit the statute was enacted; second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one; third, is it consistent with the underlying purpose of the legislative scheme to imply such a remedy for plaintiff? Where foster children alleged that certain child services agencies and officials violated O.C.G.A. § 20-2-690.1 by failing to enroll and send the children to a school or provide home schooling that met statutory standards, § 20-2-690.1 conferred upon the children a private cause of action. *Kenny A. v. Perdue*, 218 F.R.D. 277 (N.D. Ga. Aug. 18, 2003).

**Cited in** *Hale v. Davies*, 86 Ga. App. 130, 70 S.E.2d 926 (1952); *Graves v. Walton County Bd. of Educ.*, 300 F. Supp. 188 (M.D. Ga. 1968); *M.S.K. v. State*, 131

Ga. App. 1, 205 S.E.2d 59 (1974); *Jenkins v. Jenkins*, 233 Ga. 902, 214 S.E.2d 368 (1975); *State v. Young*, 234 Ga. 488, 216 S.E.2d 586 (1975); *McClain v. McClain*, 235 Ga. 659, 221 S.E.2d 561 (1975); *In re*

*D.H.*, 178 Ga. App. 119, 342 S.E.2d 367 (1986); *Spivey v. Elliott*, 29 F.3d 1522 (11th Cir. 1994); *In the Interest of J.T.*, 297 Ga. App. 636, 678 S.E.2d 111 (2009).

## OPINIONS OF THE ATTORNEY GENERAL

**Board not authorized to prescribe nonattendance standards for nonpublic schools.** — There is no specific grant of authority to the State Board of Education to prescribe any standards or require a license for nonpublic schools, other than those enumerated in Ga. L. 1945, p. 343, §§ 1, 9 and 10. Therefore, it is presumed that the General Assembly did not intend for the board to have such authority. 1957 Op. Att'y Gen. p. 119.

**Provisions neither authorize nor prohibit parents from sending children to school during teacher's absence.** — Law neither authorizes nor prohibits a school from directing the parents of children whose teacher is absent not to send the children to school during the teacher's absence. 1952-53 Op. Att'y Gen. p. 331.

**Duty of Department of Human Resources.** — While the Department of Human Resources is not bound by the compulsory school attendance law to provide education for youths in state institutions such as Youth Development Centers, the department nevertheless has the duty to provide education for youths committed to the department. 1984 Op. Att'y Gen. No. U84-47.

**Work certificates not issued to child unless exempted or excused from school.** — Work certificates should not be issued to any child within the school ages unless the child is exempted or excused from attending school. 1945-47 Op. Att'y Gen. p. 123.

## RESEARCH REFERENCES

**ALR.** — Power of public school authorities to set minimum or maximum age requirements for pupils in absence of specific statutory authority, 78 ALR2d 1021.

Conditions at school as excusing or justifying nonattendance, 9 ALR4th 122.

Validity, construction, and application of statute, regulation, or policy governing home schooling or affecting rights of home-schooled students, 70 ALR5th 169.

## 20-2-690.2. Establishment of student attendance protocol committee; membership and protocol; summary of penalties for failure to comply; reporting.

(a) The chief judge of the superior court of each county shall establish a student attendance protocol committee for its county. The purpose of the committee shall be to ensure coordination and cooperation among officials, agencies, and programs involved in compulsory attendance issues, to reduce the number of unexcused absences from school, and to increase the percentage of students present to take tests which are required to be administered under the laws of this state. The chief judge is responsible for ensuring that all members of the committee are notified of their responsibility to the committee and shall call the first

meeting of the committee in each county. The committee shall elect a chairperson and may elect other officers.

(b) Each local board of education shall participate in, consider, and make publicly available, including but not limited to posting in a conspicuous location, its decision regarding the recommendations of the committee as provided in this Code section. Independent school systems may participate in the committee in the county where the system is located. Independent school systems whose geographic area encompasses more than one county may select one of such counties in which to participate. An independent school system that elects not to participate in the committee of the county where it is located shall request that the chief judge of the superior court of a county encompassed by its geographic area to establish an independent student attendance protocol committee in the same manner as established for the county school system.

(c) Each of the following agencies, officials, or programs shall designate a representative to serve on the committee:

- (1) The chief judge of the superior court;
- (2) The juvenile court judge or judges of the county;
- (3) The district attorney for the county;
- (4) The solicitor-general of state court, if the county has a state court;
- (5) The Department of Juvenile Justice, which may include representatives from area youth detention centers or regional youth detention centers;
- (6) The superintendent, a certificated school employee, and a local school board member from each public school system in the county and a certificated school social worker from each public school system, if any are employed by the school system;
- (7) The sheriff of the county;
- (8) The chief of police of the county police department;
- (9) The chief of police of each municipal police department in the county;
- (10) The county department of family and children services;
- (11) The county board of health;
- (12) The county mental health organization;
- (13) The county Family Connection commission, board, or authority, or other county agency, board, authority, or commission having



the duty and authority to study problems of families, children, and youth and provide services to families, children, and youth; and

(14) The court approved community based risk reduction program established by the juvenile court in accordance with Code Section 15-11-10, if such a program has been established.

(d) The committee thus established may appoint such additional members as necessary and proper to accomplish the purposes of the committee.

(e) Each committee shall, by June 1, 2005, adopt a written student attendance protocol for its county school system and for each independent school system within its geographic boundaries which shall be filed with the Department of Education. The protocol shall outline in detail the procedures to be used in identifying, reporting, investigating, and prosecuting cases of alleged violations of Code Section 20-2-690.1, relating to mandatory school attendance. The protocol shall outline in detail methods for determining the causes of failing to comply with compulsory attendance and appropriately addressing the issue with children and their parents or guardians. The protocol shall also include recommendations for policies relating to tardiness. The Department of Education shall provide model school attendance protocols, if requested by the committee.

(f) A copy of the protocol shall be furnished to each agency, official, or program within the county that has any responsibility in assisting children and their parents or guardians in complying with Code Section 20-2-690.1.

(g) The committee shall write the summary of possible consequences and penalties for failing to comply with compulsory attendance under Code Section 20-2-690.1 for children and their parents, guardians, or other persons who have control or charge of children for distribution by schools in accordance with Code Section 20-2-690.1. The summary of possible consequences for children shall include possible dispositions for unruly children and possible denial or suspension of a driver's license for a child in accordance with Code Section 40-5-22.

(h) The committee shall continue in existence after writing the student attendance protocol. The chief judge of the superior court of each county shall ensure that the committee meets at least quarterly during the first year, and twice annually thereafter, to evaluate compliance with the protocol, effectiveness of the protocol, and appropriate modifications.

(i) Each local board of education shall report student attendance rates to the committee and the State Board of Education at the end of each school year, according to a schedule established by the State Board

of Education. (Code 1981, § 20-2-690.2, enacted by Ga. L. 2004, p. 107, § 11.)

**20-2-691. Minimum annual attendance required; child completing high school exempt.**

The minimum session of annual school attendance required under this subpart shall be for the full session or sessions of the school which the child is eligible to attend. Such attendance shall not be required where the child has successfully completed all requirements for a high school diploma. (Ga. L. 1945, p. 343, § 2; Ga. L. 2006, p. 851, § 2/SB 413.)

**Law reviews.** — For comment on *Crim v. McWhorter*, 242 Ga. 863, 252 S.E.2d 421 (1979), see 31 Mercer L. Rev. 341 (1979).

**OPINIONS OF THE ATTORNEY GENERAL**

**Provisions neither authorize nor prohibit parents from sending children to school during teacher's absence.** — Former visiting Teacher's Law neither authorizes nor prohibits a school

from directing the parents of children whose teacher is absent not to send the children to school during the teacher's absence. 1952-53 Op. Att'y Gen. p. 331.

**RESEARCH REFERENCES**

**ALR.** — Regulations forbidding pupils to leave school grounds during school hours, 32 ALR 1342; 48 ALR 659.

Conditions at school as excusing or justifying nonattendance, 9 ALR4th 122.

**20-2-692. General Assembly pages granted excused absences.**

Children who serve as pages of the General Assembly during the school year, either at regular or special sessions, shall be credited as present by the school in which enrolled in the same manner as an educational field trip, and such participation as a page shall not be counted as an absence, either excused or unexcused. (Ga. L. 1961, p. 580; Ga. L. 1963, p. 254, § 1; Ga. L. 2007, p. 235, § 1/HB 375.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 274 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 1008.

**20-2-692.1. Excused absences for days missed to visit with parent or legal guardian in the military prior to deployment or while on leave.**

A student whose parent or legal guardian is in military service in the armed forces of the United States or the National Guard, and such parent or legal guardian has been called to duty for or is on leave from overseas deployment to a combat zone or combat support posting, shall be granted excused absences, up to a maximum of five school days per school year, for the day or days missed from school to visit with his or her parent or legal guardian prior to such parent's or legal guardian's deployment or during such parent's or legal guardian's leave. Nothing in this Code section shall be construed to require a local school system to revise any policies relating to maximum number of excused and unexcused absences for any purposes. (Code 1981, § 20-2-692.1, enacted by Ga. L. 2006, p. 533, § 1/HB 984.)

**20-2-692.2. Foster care student attending court proceedings related to that student's foster care to be credited as present at school.**

(a) As used in this Code section, the term "foster care student" means a student who is in a foster home or otherwise in the foster care system under the Division of Family and Children Services of the Department of Human Services.

(b) A foster care student who attends court proceedings relating to the student's foster care shall be credited as present by the school and shall not be counted as an absence, either excused or unexcused, for any day, portion of a day, or days missed from school. (Code 1981, § 20-2-692.2, enacted by Ga. L. 2011, p. 260, § 2/HB 314.)

**Effective date.** — This Code section became effective July 1, 2011.

**Cross references.** — Foster Parent Bill of Rights, § 49-5-281.

**Editor's notes.** — Ga. L. 2011, p. 260, § 1/HB 314, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as 'Jessie's Law.'"

**20-2-693. Exemptions.**

(a) Children during the ages of mandatory attendance as required in subsection (a) of Code Section 20-2-690.1 who are excused from attendance in public school by county or independent school system boards in accordance with general policies and regulations promulgated by the State Board of Education shall be exempt from this subpart. The state board, in promulgating its general policies and regulations, shall take



into consideration sickness and other emergencies which may arise in any school community.

(b) Children during the ages of mandatory attendance as required in subsection (a) of Code Section 20-2-690.1 who are excused from attendance at private schools or home study programs for sickness or emergencies or for other reasons substantially the same as the reasons for excused absences from attendance at public school authorized by state board policy pursuant to subsection (a) of this Code section shall be exempt from this subpart. (Ga. L. 1945, p. 343, § 3; Ga. L. 1984, p. 1266, § 2; Ga. L. 2006, p. 851, § 3/SB 413.)

**Cross references.** — Employment of persons under 16 during school hours, § 39-2-4.

**Law reviews.** — For article on 2006 amendment of this Code section, see 23 Ga. St. U. L. Rev. 129 (2006).

### OPINIONS OF THE ATTORNEY GENERAL

**Local boards can release students to attend religious services.** — If authorized by general policies and regulations of the State Board of Education, local boards of education can release pupils upon the request of the pupils' parents to attend religious services or instruction given off the public school premises, provided such a program is not directly or indirectly financed in whole or in part from public funds and the students are not coerced to attend such services by the

school system or the school's employees. 1968 Op. Att'y Gen. No. 68-228.

**Provisions neither authorize nor prohibit parents from sending children to school during teacher's absence.** — Former visiting Teacher's Law neither authorizes nor prohibits a school from directing the parents of children whose teacher is absent not to send the parents' children to school during the teacher's absence. 1952-53 Op. Att'y Gen. p. 331.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 274 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 1008.

**ALR.** — Conditions at school as excusing or justifying nonattendance, 9 ALR4th 122.

### 20-2-694. Administration and enforcement of subpart.

It shall be the duty of each county and independent school system board of education, each local school superintendent within the state, and the Department of Education to administer this subpart and to secure its enforcement in cooperation with the other state and county agencies and in cooperation with the administrators of private schools and parents or guardians providing a home study program. The Department of Education shall coordinate with boards of education and local school superintendents regarding administration of this part with respect to students in home study programs. (Ga. L. 1945, p. 343, § 4;

Ga. L. 1984, p. 1266, § 3; Ga. L. 2012, p. 358, § 32/HB 706; Ga. L. 2012, p. 648, § 4/HB 39.)

**The 2012 amendments.** — The first 2012 amendment, effective July 1, 2012, near the middle of the first sentence, substituted “education,” for “education and” and inserted “, and the Department of Education”. The second 2012 amendment, effective July 1, 2012, added the second

sentence of this Code section. See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2012, p. 648, § 6/HB 39, not codified by the General Assembly, provides that the amendment by that Act shall apply beginning with school year 2012-2013.

## OPINIONS OF THE ATTORNEY GENERAL

**Provisions neither authorize nor prohibit parents from sending children to school during teacher’s absence.** — Former visiting Teacher’s Law neither authorizes nor prohibits a school

from directing the parents of children whose teacher is absent not to send the parents’ children to school during the teacher’s absence. 1952-53 Op. Att’y Gen. p. 331.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 271 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 1025.

### 20-2-695. Employing attendance officers in addition to visiting teachers; authority and duties.

(a) A local board of education may employ an attendance officer or attendance officers in addition to a visiting teacher or visiting teachers. Such an attendance officer must be paid wholly from local funds of the local board unless state funds are specifically appropriated for purposes of employment of attendance officers, in which case state funds may be used to the extent so appropriated. Attendance officers shall not be required to qualify under rules and regulations promulgated by the Professional Standards Commission for the certification of visiting teachers.

(b) The authority and duties of any attendance officer so appointed by a local board of education shall include:

(1) The duty to cooperate with state agencies, make monthly reports to that officer’s school superintendent, and comply with state and local rules as provided in Code Section 20-2-696;

(2) The authority to receive cooperation and attendance reports from that officer’s school system as provided for in Code Section 20-2-697;

(3) When specifically authorized by the appointing local board of education, the authority to assume temporary custody of children absent from school in the same manner as authorized for peace

officers under Code Sections 20-2-698 through 20-2-700; and any attendance officer so authorized by the appointing local board of education shall, when engaged in such function, have the same duties, authority, rights, privileges, and immunities as applicable to a peace officer engaged in such function, provided that the same shall not extend to the carrying of a weapon unless the attendance officer holds a valid certification as a peace officer from the Georgia Peace Officer Standards and Training Council;

(4) The duty to report children absent from school to the juvenile court or other court having jurisdiction as provided for in Code Section 20-2-701; and

(5) Such other authority and duties as may be provided by law or as may be provided by the appointing local board of education in conformity with law. (Ga. L. 1945, p. 343, § 6; Ga. L. 1990, p. 688, § 1; Ga. L. 1991, p. 1546, § 6; Ga. L. 1995, p. 240, § 4.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1995, in subsection (b), a comma was deleted following “rules” in paragraph (b)(1); a comma was deleted following “system” in paragraph

(b)(2); a comma was inserted following “shall” and “function” in paragraph (b)(3); and a comma was deleted following “jurisdiction” in paragraph (b)(4).

### JUDICIAL DECISIONS

**Editor’s notes.** — In light of the similarity of the statutory provisions, a decision under former Ga. L. 1919, p. 288, § 174, which was subsequently repealed but was succeeded by provisions in this Code section, is included in the annotations for this Code section.

**Attendance officer’s order denying admission to school** of children who were not vaccinated. *Sherman v. Board of Educ.*, 165 Ga. 889, 142 S.E. 152 (1928) (decided under former Ga. L. 1919, p. 288, § 174).

### RESEARCH REFERENCES

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 1027, 1028.

## 20-2-696. Duties of visiting teachers and attendance officers.

In the discharge of the duties of their office, visiting teachers, acting visiting teachers, or attendance officers shall:

(1) Cooperate fully with the Department of Human Services, the Department of Labor, and other state agencies;

(2) Make monthly and annual reports to their respective local school superintendents on attendance and other problems of child school adjustment in the public schools of their territory; and



(3) Comply with the rules and regulations of the county and independent school system boards of education and the State Board of Education. (Ga. L. 1945, p. 343, § 7; Ga. L. 1963, p. 218, § 2; Ga. L. 1972, p. 1015, § 1203; Ga. L. 1972, p. 1069, § 3; Ga. L. 1978, p. 941, § 1; Ga. L. 1984, p. 1266, § 4; Ga. L. 2009, p. 453, § 2-2/HB 228.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 173 et seq.      **C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 1027, 1028.

**20-2-697. Cooperation of principals and teachers in public schools with visiting teachers and attendance officers; attendance reports and records kept by public schools; letter indicating enrollment.**

(a) Visiting teachers and attendance officers shall receive the cooperation and assistance of all teachers and principals of public schools in the local school systems within which they are appointed to serve. It shall be the duty of the principals or local school site administrators and of the teachers of all public schools to report, in writing, to the visiting teacher or attendance officer of the local school system the names, ages, and residences of all students in attendance at their schools and classes within 30 days after the beginning of the school term or terms and to make such other reports of attendance in their schools or classes as may be required by rule or regulation of the State Board of Education. All public schools shall keep daily records of attendance, verified by the teachers certifying such records. Such reports shall be open to inspection by the visiting teacher, attendance officer, or duly authorized representative at any time during the school day. Any such attendance records and reports which identify students by name shall be used only for the purpose of providing necessary attendance information required by the state board or by law, except with the permission of the parent or guardian of a child, pursuant to the subpoena of a court of competent jurisdiction, or for verification of attendance by the Department of Public Safety for the purposes set forth in subsection (a.1) of Code Section 40-5-22. Such attendance records shall also be maintained in a format which does not identify students by name, and in this format shall be a part of the data collected for the student record component of the state-wide comprehensive educational information system pursuant to subsection (b) of Code Section 20-2-320.

(a.1) Any student shall have the right to request and receive, within three business days from the date of such request, a letter from his or her school administrator indicating that the student is enrolled

full-time and has an attendance record in good standing for the current academic year.

(b) Any person failing to carry out the duties required by subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$100.00.

(c) The provisions of this Code section shall not apply to private schools or home study programs, and enrollment and attendance information required for private schools or home study programs and penalties for failure to comply with such requirements shall be as provided in Code Section 20-2-690. (Ga. L. 1945, p. 343, § 9; Ga. L. 1969, p. 838, § 4; Ga. L. 1981, p. 829, § 1; Ga. L. 1984, p. 1266, § 5; Ga. L. 1989, p. 808, § 3; Ga. L. 1997, p. 760, § 5; Ga. L. 2000, p. 618, §§ 63, 94; Ga. L. 2004, p. 107, § 11A.)

**Editor's notes.** — Ga. L. 1997, p. 760, § 27(a), not codified by the General Assembly, provides: "Except as otherwise provided in subsection (b) of this section, this Act shall become effective on July 1, 1997, and shall apply to offenses committed on or after that date and, except for subsection (b.1) of Code Section 40-5-67.1 as enacted by this Act, this Act shall not apply to offenses committed prior to that date."

Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

**Law reviews.** — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U. L. Rev. 203 (1997).

## OPINIONS OF THE ATTORNEY GENERAL

**Board not authorized to prescribe nonattendance standards for nonpublic schools.** — There is no specific grant of authority to the State Board of Education to prescribe any standards or require a license for nonpublic schools, other than those enumerated in Ga. L. 1945, p. 343. Therefore, it is presumed that the General Assembly did not intend for the board to have such authority. 1957

Op. Att'y Gen. p. 119 (decided under Ga. L. 1945, p. 343, § 9, prior to amendment by Ga. L. 1984, p. 1266, § 5).

**Ga. L. 1945, p. 343 did not permit** a teacher to be relieved of record-keeping duties through a complete shift to some entirely different form of reporting based upon the use of data processing equipment and centralized record keeping. 1968 Op. Att'y Gen. No. 68-144.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 271 et seq.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 500 et seq. 78A C.J.S., Schools and School Districts, § 1026.

**ALR.** — Schools: extent of legislative power with respect to attendance and curriculum, 39 ALR 477; 53 ALR 832.

**20-2-698. Peace officers may take temporary custody of truant children away from home.**

Any peace officer may assume temporary custody, during school hours, of any child subject to compulsory school attendance who is found away from home and who is absent from a public or private school or a home study program without a valid written excuse from school officials or from the parent or guardian in charge of the home study program. (Ga. L. 1976, p. 768, § 1; Ga. L. 1984, p. 1266, § 5.)

**Cross references.** — Taking of child into custody generally, § 15-11-45 et seq.

**JUDICIAL DECISIONS**

**Officer reasonably stopping juvenile for violation.** — Evidence sufficiently supported a juvenile defendant's adjudication of delinquency based upon obstruction of a law enforcement officer in violation of O.C.G.A. § 16-10-24(a) as the officer was in the lawful discharge of official duties when the officer asked the juvenile to stop in order to investigate the

possibility of truancy pursuant to O.C.G.A. §§ 20-2-698 and 20-2-699; the juvenile's actions in running away despite the officer's command to stop gave the officer further reasonable suspicion that the juvenile was involved in illegal activity. *In re E.C.*, 292 Ga. App. 798, 665 S.E.2d 896 (2008).

**RESEARCH REFERENCES**

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 1027, 1028.

**ALR.** — Regulations forbidding pupils

to leave school grounds during school hours, 32 ALR 1342; 48 ALR 659.

**20-2-699. Disposition of children taken into custody.**

Any person assuming temporary custody of a child pursuant to Code Section 20-2-698 shall immediately deliver the child either to the parent, guardian, or other person having control or charge of the child or to the school from which the child is absent, or if the child is found to have been adjudged a delinquent or unruly, he shall cause the child to be brought before the probation officer of the county having jurisdiction over such child. (Ga. L. 1976, p. 768, § 1; Ga. L. 1994, p. 97, § 20.)

**JUDICIAL DECISIONS**

**Evidence sufficient for purposes of juvenile delinquency adjudication.** — Evidence sufficiently supported a juvenile defendant's adjudication of delinquency based upon obstruction of a law enforcement officer in violation of O.C.G.A. § 16-10-24(a) as the officer was in the

lawful discharge of official duties when the officer asked the juvenile to stop in order to investigate the possibility of truancy pursuant to O.C.G.A. §§ 20-2-698 and 20-2-699; the juvenile's actions in running away despite the officer's command to stop gave the officer further rea-



sonable suspicion that the juvenile was involved in illegal activity. In re E.C., 292 Ga. App. 798, 665 S.E.2d 896 (2008).

#### RESEARCH REFERENCES

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 1017, 1027, 1028.

### **20-2-700. Reports by peace officers to school authorities and parent or guardian.**

Any person taking action pursuant to Code Section 20-2-699 shall report the matter and the disposition made by him of the child to the school authorities of the county, independent or area school system, and to the child's parent or guardian. (Ga. L. 1976, p. 768, § 1.)

#### RESEARCH REFERENCES

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 1027, 1028.

### **20-2-701. Responsibility for reporting truants to juvenile or other courts.**

(a) Local school superintendents as applied to private schools, the Department of Education as applied to home study programs, or visiting teachers and attendance officers as applied to public schools, after written notice to the parent or guardian of a child, shall report to the juvenile or other court having jurisdiction under Chapter 11 of Title 15 any child who is absent from a public or private school or a home study program in violation of this subpart. If the judge of the court places such child in a home or in a public or private institution pursuant to Chapter 11 of Title 15, school shall be provided for such child. The Department of Education shall coordinate with local school superintendents with respect to attendance records and notification for students in home study programs.

(b) Local school superintendents or visiting teachers and attendance officers shall use their best efforts to notify any child 14 years of age or older who has only three absences remaining prior to violating the attendance requirements contained in subsection (a.1) of Code Section 40-5-22. Such notification shall be made via first-class mail.

(c) Local school superintendents or visiting teachers and attendance officers shall report to the State Board of Education, which shall, in turn, report to the Department of Driver Services any child 14 years of age or older who does not meet the attendance requirements contained

in subsection (a.1) of Code Section 40-5-22. Such report shall include the child's name, current address, and social security number, if known.

(d) Subsections (b) and (c) of this Code section shall not be effective until full implementation of the state-wide education information system. (Ga. L. 1945, p. 343, § 11; Ga. L. 1984, p. 1266, § 7; Ga. L. 2004, p. 107, § 11B; Ga. L. 2005, p. 334, § 9-2/HB 501; Ga. L. 2012, p. 358, § 33/HB 706; Ga. L. 2012, p. 648, § 5/HB 39.)

**The 2012 amendments.** — The first 2012 amendment, effective July 1, 2012, substituted “, the Department of Education as applied to home study programs,” for “and home study programs” in the first sentence of subsection (a). The second 2012 amendment, effective July 1, 2012, added the third sentence of subsection (a). See editor's note for applicability.

**Editor's notes.** — Ga. L. 2004, p. 107, § 11B, provided that new subsections (b) and (c) became effective upon full implementation of the state-wide education information system. Ga. L. 2005, p. 334, § 9-2(b), provided that new subsection (c)

became effective upon full implementation of the state-wide education information system, as provided in Ga. L. 2004, p. 107, § 11B. The state-wide education information system was fully implemented in 2008.

Ga. L. 2012, p. 648, § 6/HB 39, not codified by the General Assembly, provides that the amendment by that Act shall apply beginning with school year 2012-2013.

**Cross references.** — School attendance requirements for licensing, § 40-5-22.

## OPINIONS OF THE ATTORNEY GENERAL

**Children absent illegally from school.** — This section provides that should any child absent himself or herself from school in violation of the law, the visiting teacher and attendance officer shall give written notice of the child's absence from school to the parent or

guardian, and if the delinquency of the child is not corrected, the teacher and attendance officer should report the situation to the juvenile, superior, city, or other court having jurisdiction of the child. 1952-53 Op. Att'y Gen. p. 77 (see O.C.G.A. § 20-2-701).

## RESEARCH REFERENCES

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 1029.

**ALR.** — Regulations forbidding pupils

to leave school grounds during school hours, 32 ALR 1342; 48 ALR 659.

## 20-2-702. Governor may proclaim subpart suspended.

Reserved. Repealed by Ga. L. 2005, p. 317, § 1/HB 26, effective July 1, 2005.

**Editor's notes.** — This Code section was based on Ga. L. 1957, p. 168, § 1.

**20-2-703. Subpart is inapplicable where operation of public schools is discontinued.**

Reserved. Repealed by Ga. L. 1984, p. 1266, § 8, effective April 3, 1984.

**Editor's notes.** — This Code section was based on Ga. L. 1958, p. 231, § 1; Ga. L. 1983, p. 3, § 53.

**Subpart 2A****Clubs and Organizations****20-2-705. Parental consent for participation in school clubs and organizations.**

(a) As used in this Code section, the term:

(1) "Clubs and organizations" means clubs and organizations comprised of students who wish to organize and meet for common goals, objectives, or purposes and which is directly under the sponsorship, direction, and control of the school. This term shall include any activities reasonably related to such clubs and organizations, but shall not include competitive interscholastic activities or events.

(2) "Competitive interscholastic activity" means functions held under the auspices or sponsorship of a school that involves its students in competition between individuals or groups representing two or more schools. This term shall include cheerleading, band, and chorus.

(b) Each local board of education shall include in the student code of conduct distributed annually at the beginning of each school year pursuant to Code Section 20-2-736 information regarding school clubs and organizations. Such information shall include without limitation the name of the club or organization, mission or purpose of the club or organization, name of the club's or organization's faculty advisor, and a description of past or planned activities. On the form included in the student code of conduct, as required in Code Section 20-2-751.5, the local board of education shall provide an area for a parent or legal guardian to decline permission for his or her student to participate in a club or organization designated by him or her.

(c) For clubs or organizations started during the school year, the local board of education shall require written permission from a parent or guardian prior to a student's participation. (Code 1981, § 20-2-705, enacted by Ga. L. 2006, p. 851, § 4/SB 413.)



**Law reviews.** — For article on 2006 enactment of this Code section, see 23 Ga. St. U. L. Rev. 129 (2006).

### Subpart 3

#### Records

#### 20-2-720. Inspection of students' records by parents.

No local school system, whether county, independent, or area, shall have a policy of denying, or which effectively prevents, the parents of students who are in attendance at or who have been enrolled in any facility within such system the right to inspect and review the education records of their child. A parent shall be entitled to inspect and review only information relating to his or her own child and if any material or document in a child's record includes information on another student, such information regarding any other student shall not be made available for inspection or review except to the parents of that student. Both parents of a child shall be entitled to inspect and review the education records of their child or to be provided information concerning their child's progress. Information concerning a child's education record shall not be withheld from the noncustodial parent unless a court order has specifically removed the right of the noncustodial parent to such information or unless parental rights have been terminated. For purposes of this Code section, "education records" shall include attendance reports and records. (Code 1981, § 20-2-720, enacted by Ga. L. 1994, p. 531, § 1; Ga. L. 2004, p. 107, § 11C.)

**Editor's notes.** — The former subpart, consisting of Code Section 20-2-720, was based on Ga. L. 1919, p. 288, §§ 89, 166; Code 1933, §§ 32-914, 32-1020; Ga. L. 1969, p. 838, §§ 1, 2, and was repealed by Ga. L. 1985, p. 1657, § 2, effective July 1, 1986.

**Administrative rules and regulations.** — Procedural safeguards/parent rights, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Special Education, Sec. 160-4-7-.09.

### JUDICIAL DECISIONS

**No private cause of action created.** — A private cause of action in favor of a parent denied access to a child's education records did not exist, and even if the right did, damages could not be used as an

enforcement mechanism. *Chisolm v. Tippens*, 289 Ga. App. 757, 658 S.E.2d 147 (2008), cert. denied, 129 S. Ct. 576, 172 L.Ed.2d 431 (2008).

### PART 2

#### DISCIPLINE

**Law reviews.** — For article, "The Amended Open Meetings Law: New Requirements for Publicly Funded Corpora-

tions As Well As Governmental Agencies," see 25 Ga. St. B.J. 78 (1988).

**RESEARCH REFERENCES**

**Am. Jur. Proof of Facts.** — Teacher's Use of Excessive Corporal Punishment, 20 POF2d 511.

Subpart 1

Corporal Punishment

**20-2-730. Policies and regulations on use of corporal punishment.**

All area, county, and independent boards of education shall be authorized to determine and adopt policies and regulations relating to the use of corporal punishment by school principals and teachers employed by such boards. (Ga. L. 1964, p. 673, § 1.)

**Cross references.** — Cruelty to children, T. 16, C. 5, A. 5. Reporting of child abuse, § 19-7-5.

**JUDICIAL DECISIONS**

**Cited** in Pennsylvania Millers Mut. County School Dist., 190 Ga. App. 255, Ins. Co. v. Crews, 184 Ga. App. 492, 361 378 S.E.2d 505 (1989). S.E.2d 657 (1987); Mathis v. Berrien

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 314 et seq., 321.

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 1089, 1090.

**ALR.** — Personal liability of school authorities for dismissal or suspension of pupil, 42 ALR 763.

Teacher's civil liability for administering corporal punishment to pupil, 43 ALR2d 469.

Criminal liability for excessive or improper punishment inflicted on child by parent, teacher, or one in loco parentis, 89 ALR2d 396.

Right to discipline pupil for conduct away from school grounds or not immediately connected with school activities, 53 ALR3d 1124.

**20-2-731. When and how corporal punishment may be administered.**

An area, county, or independent board of education may, upon the adoption of written policies, authorize any principal or teacher employed by the board to administer, in the exercise of his sound discretion, corporal punishment on any pupil or pupils placed under his supervision in order to maintain proper control and discipline. Any such authorization shall be subject to the following requirements:

(1) The corporal punishment shall not be excessive or unduly severe;

(2) Corporal punishment shall never be used as a first line of punishment for misbehavior unless the pupil was informed beforehand that specific misbehavior could occasion its use; provided, however, that corporal punishment may be employed as a first line of punishment for those acts of misconduct which are so antisocial or disruptive in nature as to shock the conscience;

(3) Corporal punishment must be administered in the presence of a principal or assistant principal, or the designee of the principal or assistant principal, employed by the board of education authorizing such punishment, and the other principal or assistant principal, or the designee of the principal or assistant principal, must be informed beforehand and in the presence of the pupil of the reason for the punishment;

(4) The principal or teacher who administered corporal punishment must provide the child's parent, upon request, a written explanation of the reasons for the punishment and the name of the principal or assistant principal, or designee of the principal or assistant principal, who was present; provided, however, that such an explanation shall not be used as evidence in any subsequent civil action brought as a result of the corporal punishment; and

(5) Corporal punishment shall not be administered to a child whose parents or legal guardian has upon the day of enrollment of the pupil filed with the principal of the school a statement from a medical doctor licensed in Georgia stating that it is detrimental to the child's mental or emotional stability. (Ga. L. 1964, p. 673, § 2; Ga. L. 1977, p. 1290, § 1.)

### JUDICIAL DECISIONS

**Consideration with Family Violence Act.** — Trial court erred in finding that a guardian proved by a preponderance of the evidence, as required under O.C.G.A. § 19-13-3(a), that a mother committed an act of family violence pursuant to O.C.G.A. § 19-13-1 as there was insufficient evidence that the mother committed an act of violence, specifically simple battery in violation of O.C.G.A. § 16-5-23, as opposed to administering reasonable discipline in the form of corporal punishment as O.C.G.A. § 16-5-23 specifically exempted corporal punishment from the definition of battery, and the appellate court determined after considering

O.C.G.A. §§ 16-3-20 and 20-2-731 that the alleged action of the mother in slapping the child did not rise to the level of unreasonable discipline. *Buchheit v. Stinson*, 260 Ga. App. 450, 579 S.E.2d 853 (2003).

**Punishment not excessive as matter of law.** — It is to be anticipated that corporal punishment will produce pain and the potential for bruising, but as long as the student experiences no more than the short-term discomfort to be expected from the administration of corporal punishment, the evidence demands the conclusion as a matter of law that the punishment administered was neither



excessive nor unduly severe. *Maddox v. Boutwell*, 176 Ga. App. 492, 336 S.E.2d 599 (1985).

**Contact not amounting to corporal punishment.** — Teacher's grasping student's face to get the student's attention did not amount to corporal punishment. *Daniels v. Gordon*, 232 Ga. App. 811, 503 S.E.2d 72 (1998).

**Summary judgment reversed when**

**materially varying versions of what occurred.** — Summary judgment for principal was reversed in action brought by parent for injuries to child whose arm was broken while the child was being administered corporal punishment since there were materially varying versions as to what occurred. *Crews v. McQueen*, 192 Ga. App. 560, 385 S.E.2d 712 (1989).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 314 et seq., 321.

**Am. Jur. Trials.** — Public School Liability: Constitutional Tort Claims for Excessive Punishment and Failure to Supervise Students, 48 Am. Jur. Trials 587.

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 1089, 1090.

**ALR.** — Personal liability of school au-

thorities for dismissal or suspension of pupil, 42 ALR 763.

Teacher's civil liability for administering corporal punishment to pupil, 43 ALR2d 469.

Criminal liability for excessive or improper punishment inflicted on child by parent, teacher, or one in loco parentis, 89 ALR2d 396.

## 20-2-732. When principal or teacher not liable for administering corporal punishment.

No principal or teacher who shall administer corporal punishment to a pupil or pupils under his care and supervision in conformity with the policies and regulations of the area, county, or independent board of education employing him and in accordance also with this subpart shall be held accountable or liable in any criminal or civil action based upon the administering of corporal punishment where the corporal punishment is administered in good faith and is not excessive or unduly severe. (Ga. L. 1964, p. 673, § 3.)

**Cross references.** — Purchase of liability insurance for school officials and employees, § 20-2-990 et seq.

## JUDICIAL DECISIONS

**Immunity applied** — When the student, the plaintiff mother's son, repeatedly disobeyed the defendant teacher's command to be seated, and the student first touched the teacher by forcing the teacher's hand from a doorframe, if the teacher's actions constituted corporal punishment rather than self defense, some corporal punishment was justified, and the fact that the teacher previously

made derogatory comments to the student or otherwise harbored ill will toward the student was not enough to evidence either actual malice or an intent to injure; thus, immunity under O.C.G.A. § 20-2-732 applied to the state law claims against the teacher. *Peterson v. Baker*, 504 F.3d 1331 (11th Cir. 2007).

**Cited** in *Maddox v. Boutwell*, 176 Ga. App. 492, 336 S.E.2d 599 (1985).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 6 Am. Jur. 2d, Assault and Battery, §§ 31, 97.

**Am. Jur. Trials.** — Public School Liability: Constitutional Tort Claims for Excessive Punishment and Failure to Supervise Students, 48 Am. Jur. Trials 587.

**C.J.S.** — 7 C.J.S., Assault and Battery, § 23.

**ALR.** — Right to discipline pupil for conduct away from school grounds, 41 ALR 1312.

Personal liability of school authorities for dismissal or suspension of pupil, 42 ALR 763.

Teacher's civil liability for administering corporal punishment to pupil, 43 ALR2d 469.

Criminal liability for excessive or improper punishment inflicted on child by parent, teacher, or one in loco parentis, 89 ALR2d 396.

## Subpart 1A

## Improved Student Learning Environment and Discipline

**Editor's notes.** — Ga. L. 1999, p. 438, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Improved Student Learning Environment and Discipline Act of 1999.'"

**Law reviews.** — For note on 1999 enactment of this subpart, see 16 Ga. St. U. L. Rev. 116 (1999).

### 20-2-735. Adoption of policies by local boards to improve student learning environment.

(a) No later than July 1, 2000, each local board of education shall adopt policies designed to improve the student learning environment by improving student behavior and discipline. These policies shall provide for the development of age-appropriate student codes of conduct containing standards of behavior, a student support process, a progressive discipline process, and a parental involvement process. The State Board of Education shall establish minimum standards for such local board policies. The Department of Education shall make available for utilization by each local board of education model student codes of conduct, a model student support process, a model progressive discipline process, and a model parental involvement process.

(b) Student standards of behavior developed pursuant to this subpart shall be designed to create the expectation that students will behave themselves in such a way so as to facilitate a learning environment for themselves and other students, respect each other and school district employees, obey student behavior policies adopted by the local board of education, and obey student behavior rules established by individual schools.

(c) Student support processes developed pursuant to this subpart shall be designed to create the expectation that the process of disciplining students will include due consideration, as appropriate in light of

the severity of the behavioral problem, of student support services that may help the student address behavioral problems and that may be available through the school, the school system, other public entities, or community organizations.

(d) Progressive discipline processes developed pursuant to this subpart shall be designed to create the expectation that the degree of discipline will be in proportion to the severity of the behavior leading to the discipline, that the previous discipline history of the student being disciplined and other relevant factors will be taken into account, and that all due process procedures required by federal and state law will be followed.

(e) Parental involvement processes developed pursuant to this subpart shall be designed to create the expectation that parents and guardians, teachers, and school administrators will work together to improve and enhance student behavior and academic performance and will communicate freely their concerns about and actions in response to student behavior that detracts from the learning environment. The student code of conduct developed pursuant to this Code section shall encourage parents and guardians to inform their children of the consequences, including potential criminal penalties, of underage sexual conduct and crimes for which a minor can be tried as an adult.

(f) It is the policy of this state that it is preferable to reassign disruptive students to alternative educational settings rather than to suspend or expel such students from school. (Code 1981, § 20-2-735, enacted by Ga. L. 1999, p. 438, § 4; Ga. L. 2000, p. 618, § 64; Ga. L. 2006, p. 851, § 5/SB 413.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2006, “children of the consequences” was substituted for “children on the consequences” in the last sentence of subsection (e).

**Editor’s notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly,

provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

**Law reviews.** — For article on 2006 amendment of this Code section, see 23 Ga. St. U. L. Rev. 129 (2006).

## **20-2-736. Student codes of conduct; distribution; disciplinary action for violations; parental involvement.**

(a) At the beginning of each school year, local boards of education shall provide for the distribution of student codes of conduct developed pursuant to Code Section 20-2-735 to each student upon enrollment. Local boards of education shall provide for the distribution of such student codes of conduct to the parents or guardians of each student through such means as may best accomplish such distribution at the local level and are appropriate in light of the grade level of the student, including distribution of student codes of conduct to students and



parents or guardians jointly. Local boards of education shall solicit or require the signatures or confirmation of receipt of students and parents or guardians in acknowledgment of the receipt of such student codes of conduct. A signature or confirmation of receipt may be obtained in writing, via electronic mail or facsimile, or by any other electronic or other means as designated by the local board. A parent or legal guardian that does not acknowledge receipt of the student code of conduct shall not be absolved of any responsibility with respect to the information contained in the student code of conduct. In addition, student codes of conduct shall be available in each school and classroom.

(b) Local boards of education shall provide for disciplinary action against students who violate student codes of conduct.

(c) Local boards of education shall provide opportunities for parental involvement in developing and updating student codes of conduct. (Code 1981, § 20-2-736, enacted by Ga. L. 1999, p. 438, § 4; Ga. L. 2006, p. 851, § 6/SB 413.)

**Law reviews.** — For article on 2006 amendment of this Code section, see 23 Ga. St. U. L. Rev. 129 (2006).

**20-2-737. Reports by teacher of violations of student code of conduct; notification to parents of support services or disciplinary action.**

(a) Local board policies adopted pursuant to Code Section 20-2-735 shall require the filing of a report by a teacher who has knowledge that a student has exhibited behavior that repeatedly or substantially interferes with the teacher's ability to communicate effectively with the students in his or her class or with the ability of such student's classmates to learn, where such behavior is in violation of the student code of conduct. Such report shall be filed with the principal or the principal's designee within one school day of the most recent occurrence of such behavior, shall not exceed one page, and shall describe the behavior. The principal or the principal's designee shall, within one school day after receiving such a report from a teacher, send to the student's parents or guardian a copy of the report and information regarding how the student's parents or guardians may contact the principal or the principal's designee.

(b) If student support services are utilized or if disciplinary action is taken in response to such a report by the principal or the principal's designee, the principal or the principal's designee shall send written notification to the teacher and the student's parents or guardians of the student support services being utilized or the disciplinary action taken

within one school day after such utilization or action and shall make a reasonable attempt to confirm that such written notification has been received by the student's parents or guardians. Such written notification shall include information regarding how the student's parents or guardians may contact the principal or the principal's designee. (Code 1981, § 20-2-737, enacted by Ga. L. 1999, p. 438, § 4.)

**20-2-738. Authority of teacher over classroom; procedures following removal of student from classroom; placement review committees.**

(a) A teacher shall have the authority, consistent with local board policy, to manage his or her classroom, discipline students, and refer a student to the principal or the principal's designee to maintain discipline in the classroom. The principal or the principal's designee shall respond when a student is referred by a teacher by employing appropriate discipline management techniques that are consistent with local board policy.

(b) A teacher shall have the authority to remove from his or her class a student who repeatedly or substantially interferes with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn, where the student's behavior is in violation of the student code of conduct, provided that the teacher has previously filed a report pursuant to Code Section 20-2-737 or determines that such behavior of the student poses an immediate threat to the safety of the student's classmates or the teacher. Each school principal shall fully support the authority of every teacher in his or her school to remove a student from the classroom under this Code section. Each school principal shall implement the policies and procedures of the superintendent and local board of education relating to the authority of every teacher to remove a student from the classroom and shall disseminate such policies and procedures to faculty, staff, and parents or guardians of students. The teacher shall file with the principal or the principal's designee a report describing the student's behavior, in one page or less, by the end of the school day on which such removal occurs or at the beginning of the next school day. The principal or the principal's designee shall, within one school day after the student's removal from class, send to the student's parents or guardians written notification that the student was removed from class, a copy of the report filed by the teacher, and information regarding how the student's parents or guardians may contact the principal or the principal's designee.

(c) If a teacher removes a student from class pursuant to subsection (b) of this Code section, the principal or the principal's designee shall discuss the matter with the teacher and the student by the end of the

school day on which such removal occurs or at the beginning of the next school day. The principal or the principal's designee shall give the student oral or written notice of the grounds for his or her removal from class and, if the student denies engaging in such conduct, the principal or the principal's designee shall explain the evidence which supports his or her removal from class and give the student an opportunity to present his or her explanation of the situation. If, after such discussions, the principal or the principal's designee seeks to return the student to the teacher's class and the teacher gives his or her consent, the student shall be returned to the class, and the principal or the principal's designee may take action to discipline the student, as may be warranted, pursuant to paragraph (1) of subsection (e) of this Code section. If, after such discussions, the principal or the principal's designee seeks to return the student to the teacher's class and the teacher withholds his or her consent to the student's return to his or her class, the principal or the principal's designee shall determine an appropriate temporary placement for the student by the end of the first school day following such removal and shall also take steps to convene a meeting of a placement review committee. The placement review committee shall convene by the end of the second school day following such removal by the teacher and shall issue a decision by the end of the third school day following such removal by the teacher. An appropriate temporary placement for the student shall be a placement that, in the judgment of the principal or the principal's designee, provides the least interruption to the student's education and reflects other relevant factors, including, but not limited to, the severity of the behavior that was the basis for the removal, the student's behavioral history, the student's need for support services, and the available education settings; provided, however, that the student shall not be returned to the class of the teacher who removed him or her, as an appropriate temporary placement, unless the teacher gives his or her consent. The temporary placement shall be in effect from the time of removal until the decision of the placement review committee is issued or, if applicable, a placement determination is made pursuant to paragraph (2) of subsection (e) of this Code section.

(d) Local board policies adopted pursuant to Code Section 20-2-735 shall provide for the establishment at each school of one or more placement review committees, each of which is to be composed of three members, to determine the placement of a student when a teacher withholds his or her consent to the return of a student to the teacher's class. For each committee established, the faculty shall choose two teachers to serve as members and one teacher to serve as an alternate member, and the principal shall choose one member of the professional staff of the school to serve as a member. The teacher withholding consent to readmit the student may not serve on the committee. The placement review committee shall have the authority to:



(1) Return the student to the teacher's class upon determining that such placement is the best alternative or the only available alternative; or

(2) Refer the student to the principal or the principal's designee for appropriate action consistent with paragraph (2) of subsection (e) of this Code section.

The decision of the placement review committee shall be in writing and shall be made within three school days after the teacher withholds consent to the return of a student. Local boards of education shall provide training for members of placement review committees regarding the provisions of this subpart, including procedural requirements; local board policies relating to student discipline; and the student code of conduct that is applicable to the school.

(e)(1) If a placement review committee decides to return a student to a class from which he or she was removed, the principal or the principal's designee shall implement such decision of the placement review committee. In addition, the principal or the principal's designee may, consistent with any applicable procedural requirements of the Constitutions of the United States and this state and after considering the use of any appropriate student support services, take any of the following actions which are authorized as a response to the alleged violation of the student code of conduct by local board policies adopted pursuant to Code Section 20-2-735:

(A) Place the student in an alternative education program;

(B) Impose out-of-school suspension for not more than ten school days, including any time during which the student was subject to out-of-school suspension after his or her removal from class pursuant to subsection (b) of this Code section; or

(C) Make another disciplinary decision or recommendation consistent with local board policy.

(2) If a placement review committee decides not to return a student to a class from which he or she was removed, the principal or the principal's designee shall implement such decision of the placement review committee. In addition, the principal or the principal's designee shall determine an appropriate placement for the student and may take action to discipline the student, in a manner consistent with any applicable procedural requirements of the Constitutions of the United States and this state and after considering the use of any appropriate student support services, as follows, provided that the placement or disciplinary action is authorized as a response to the alleged violation of the student code of conduct by local board policies adopted pursuant to Code Section 20-2-735:

(A) Place the student into another appropriate classroom or an alternative education program;

(B) Impose out-of-school suspension for not more than ten school days, including any time during which the student was subject to out-of-school suspension after his or her removal from class pursuant to subsection (b) of this Code section;

(C) Make another placement or disciplinary decision or recommendation consistent with local board policy; or

(D) Implement or recommend any appropriate combination of the above and return the student to the class from which he or she was removed upon the completion of any disciplinary or placement action taken pursuant to this paragraph.

(f) Within one school day of taking action pursuant to subsection (e) of this Code section, the principal or the principal's designee shall send written notification of such action to the teacher and the parents or guardians of the student and shall make a reasonable attempt to confirm that such written notification has been received by the student's parents or guardians.

(g) Parents or guardians of a student who has been removed from class pursuant to subsection (b) of this Code section may be required to participate in conferences that may be requested by the principal or the principal's designee; provided, however, that a student may not be penalized for the failure of his or her parent or guardian to attend such a conference.

(h) The procedures contained in this Code section relating to student conferences and notification of parents or guardians are minimum requirements. Nothing in this Code section shall be construed to limit the authority of a local board of education to establish additional requirements relating to student conferences, notification of parents or guardians, conferences with parents or guardians, or other procedures required by the Constitutions of the United States or this state. (Code 1981, § 20-2-738, enacted by Ga. L. 1999, p. 438, § 4; Ga. L. 2000, p. 618, § 65; Ga. L. 2004, p. 107, § 12.)

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, may be cited as the 'A Plus Education Reform Act of 2000.' provides: "This Act shall be known and

## **20-2-739. Conflict management and resolution; cultural diversity training programs.**

On and after July 1, 2000, the Department of Education shall provide training programs in conflict management and resolution and in cultural diversity for voluntary implementation by local boards of

education for school employees, parents and guardians, and students. (Code 1981, § 20-2-739, enacted by Ga. L. 1999, p. 438, § 4.)

**20-2-740. Annual report by local boards of education regarding disciplinary and placement actions; annual study by Department of Education.**

(a) Each local board of education shall file an annual report, by August 1 of each year, with the Department of Education regarding disciplinary and placement actions taken during the prior school year. Such report shall classify the types of actions into the following categories:

(1) Actions in which a student was assigned to in-school suspension;

(2) Actions in which a student was suspended for a period of ten days or less;

(3) Actions in which a student was suspended for a period of more than ten days but not beyond the current school quarter or semester;

(4) Actions in which a student was expelled beyond the current school quarter or semester but not permanently expelled;

(5) Actions in which a student was permanently expelled;

(6) Actions in which a student was placed in an alternative educational setting;

(7) Actions in which a student was suspended from riding the bus;

(8) Actions in which corporal punishment was administered; and

(9) Actions in which a student was removed from class pursuant to subsection (b) of Code Section 20-2-738.

(b) For each category of disciplinary or placement action listed in paragraphs (1) through (9) of subsection (a) of this Code section, the local board shall provide the following information: the number of students subject to the type of disciplinary or placement action; the age and grade level of such students; such students' race and gender; and the number of students subject to the type of disciplinary action who were eligible for free or reduced price lunches under federal guidelines. For each action listed in paragraph (9) of subsection (a) of this Code section, the local board shall also provide information regarding the decisions of placement review committees and the disciplinary and placement decisions made by principals or their designees. The data required by this Code section shall be reported separately for each school within the local school system and collected and reported in



compliance with the requirements of 20 U.S.C. Sections 1232g and 1232h.

(c) The Department of Education shall conduct a study for each school year based upon the statistical data filed by local boards pursuant to this Code section for the purpose of determining trends in discipline. The department shall also utilize existing demographic data on school personnel as needed to establish trends in discipline. Nothing in this Code section shall be construed to authorize the public release of personally identifiable information regarding students or school personnel. The department shall prepare a report for the General Assembly on the study annually and notify the members of the General Assembly of the availability of the report in the manner which it deems to be most effective and efficient. (Code 1981, § 20-2-740, enacted by Ga. L. 1999, p. 438, § 4; Ga. L. 2005, p. 1036, § 14/SB 49.)

**20-2-741. Local boards of education to send copies of policies to Department of Education; applicability; effect on Individualized Education Programs.**

Repealed by Ga. L. 2012, p. 358, § 34/HB 706, effective July 1, 2012.

**Editor's notes.** — This Code section was based on Ga. L. 1999, p. 438, § 4.

**Subpart 2**

**Public School Disciplinary Tribunals**

**Administrative rules and regulations.** — Discipline, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Special Education, Sec. 160-4-7-.10.

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 314 et seq., 321.

**20-2-750. Short title.**

This subpart shall be known and may be cited as the “Public School Disciplinary Tribunal Act.” (Ga. L. 1979, p. 663, § 1.)

**20-2-751. Definitions.**

As used in this subpart, the term:

(1) “Expulsion” means expulsion of a student from a public school beyond the current school quarter or semester.

(2) “Long-term suspension” means the suspension of a student from a public school for more than ten school days but not beyond the current school quarter or semester.

(3) “Short-term suspension” means the suspension of a student from a public school for not more than ten school days.

(4) “Weapon” means a firearm as such term is defined in Section 921 of Title 18 of the United States Code. (Ga. L. 1979, p. 663, § 2; Ga. L. 1995, p. 1072, § 3.)

### JUDICIAL DECISIONS

**Permanent expulsion of a student for disciplinary reasons** was not contrary to law since the constitutional right to free public education may be limited and O.C.G.A. § 20-2-751 does not prohibit permanent expulsion; further, such expulsion does not conflict with or violate O.C.G.A. § 20-2-690.1, the compulsory attendance law. *D.B. v. Clarke County Bd. of Educ.*, 220 Ga. App. 330, 469 S.E.2d 438 (1996).

nursing school student’s 42 U.S.C. § 1983 suit alleging that the college’s administrators violated the student’s U.S. Const., amend. XIV procedural due process rights, the court referenced O.C.G.A. § 20-2-751 in determining that the student’s suspension was considered to be a long-term suspension because the suspension exceeded 10 days. *Castle v. Marquardt*, 632 F. Supp. 2d 1317 (N.D. Ga. 2009).

**Long-term suspension found.** — In a

### 20-2-751.1. Expulsion and disciplinary policy for students bringing weapons to school.

(a) Each local board of education shall establish a policy requiring the expulsion from school for a period of not less than one calendar year of any student who is determined, pursuant to this subpart, to have brought a weapon to school.

(b) The local board of education shall have the authority to modify such expulsion requirement as provided in subsection (a) of this Code section on a case-by-case basis.

(c) A hearing officer, tribunal, panel, superintendent, or local board of education shall be authorized to place a student determined to have brought a weapon to school in an alternative educational setting.

(d) Nothing in this Code section shall infringe on any right provided to students with Individualized Education Programs pursuant to the federal Individuals with Disabilities Education Act, Section 504 of the federal Rehabilitation Act of 1973, or the federal Americans with Disabilities Act. (Code 1981, § 20-2-751.1, enacted by Ga. L. 1995, p. 1072, § 4.)

**20-2-751.2. Students subject to disciplinary orders of other school systems.**

(a) As used in this Code section, the term “disciplinary order” means any order of a local school system in this state, a private school in this state, or a public school outside of this state which imposes short-term suspension, long-term suspension, or expulsion upon a student in such system or school.

(b) A local board of education which has a student who attempts to enroll or who is enrolled in any school in its school system during the time in which that student is subject to a disciplinary order is authorized to refuse to enroll or subject that student to short-term suspension, long-term suspension, or expulsion for any time remaining in that other school system’s or school’s disciplinary order upon receiving a certified copy of such order if the offense which led to such suspension or expulsion in the other school system or school was an offense for which suspension or expulsion could be imposed in the enrolling school.

(c) A local school system or school may request of another school system or school whether any disciplinary order has been imposed by the other school system or school upon a student who is seeking to enroll or is enrolled in the requesting system or school. If such an order has been imposed and is still in effect for such student, the requested school system or private school in this state shall so inform the requesting system or school and shall provide a certified copy of the order to the requesting system or school.

(d) If any school administrator determines from the information obtained pursuant to this Code section or from Code Section 15-11-28 or 15-11-80 that a student has been convicted of or has been adjudicated to have committed an offense which is a designated felony act under Code Section 15-11-63, such administrator shall so inform all teachers to whom the student is assigned and other school personnel to whom the student is assigned. Such teachers and other certificated professional personnel as the administrator deems appropriate may review the information in the student’s file provided pursuant to this Code section that has been received from other schools or from the juvenile courts or superior courts. Such information shall be kept confidential. (Code 1981, § 20-2-751.2, enacted by Ga. L. 1995, p. 1340, § 4; Ga. L. 1996, p. 6, § 20; Ga. L. 1997, p. 1436, § 4; Ga. L. 2000, p. 20, § 17; Ga. L. 2004, p. 107, § 13.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1995, this Code section, originally designated as Code Sec-

tion 20-2-751.1, was redesignated as Code Section 20-2-751.2.

**Editor’s notes.** — Ga. L. 1997, p. 1436,



§ 1, not codified by the General Assembly, provides that the act shall be known and may be cited as the “School Safety Act.” ing on the 1997 amendment of this Code section, see 14 Ga. St. U. L. Rev. 155 (1997).

**Law reviews.** — For article comment-

**20-2-751.3. Student code of conduct; policy towards disruptive students.**

Reserved. Repealed by Ga. L. 1999, p. 438, § 5, effective July 1, 1999.

**Editor’s notes.** — This Code section was based on Ga. L. 1981, § 20-2-751.3, enacted by Ga. L. 1997, p. 1436, § 5.

**20-2-751.4. Policies prohibiting bullying; assignment to alternative school; notice.**

(a) As used in this Code section, the term “bullying” means an act which occurs on school property, on school vehicles, at designated school bus stops, or at school related functions or activities, or by use of data or software that is accessed through a computer, computer system, computer network, or other electronic technology of a local school system, that is:

(1) Any willful attempt or threat to inflict injury on another person, when accompanied by an apparent present ability to do so;

(2) Any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm; or

(3) Any intentional written, verbal, or physical act which a reasonable person would perceive as being intended to threaten, harass, or intimidate, that:

(A) Causes another person substantial physical harm within the meaning of Code Section 16-5-23.1 or visible bodily harm as such term is defined in Code Section 16-5-23.1;

(B) Has the effect of substantially interfering with a student’s education;

(C) Is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or

(D) Has the effect of substantially disrupting the orderly operation of the school.

(b) No later than August 1, 2011:

(1) Each local board of education shall adopt a policy that prohibits bullying of a student by another student and shall require such prohibition to be included in the student code of conduct for schools in that school system;

(2) Each local board policy shall require that, upon a finding by the disciplinary hearing officer, panel, or tribunal of school officials provided for in this subpart that a student in grades six through 12 has committed the offense of bullying for the third time in a school year, such student shall be assigned to an alternative school;

(3) Each local board of education shall establish and publish in its local board policy a method to notify the parent, guardian, or other person who has control or charge of a student upon a finding by a school administrator that such student has committed an offense of bullying or is a victim of bullying; and

(4) Each local board of education shall ensure that students and parents of students are notified of the prohibition against bullying, and the penalties for violating the prohibition, by posting such information at each school and by including such information in student and parent handbooks.

(c) No later than January 1, 2011, the Department of Education shall develop a model policy regarding bullying, that may be revised from time to time, and shall post such policy on its website in order to assist local school systems. Such model policy shall include:

(1) A statement prohibiting bullying;

(2) A requirement that any teacher or other school employee who has reliable information that would lead a reasonable person to suspect that someone is a target of bullying shall immediately report it to the school principal;

(3) A requirement that each school have a procedure for the school administration to promptly investigate in a timely manner and determine whether bullying has occurred;

(4) An age-appropriate range of consequences for bullying which shall include, at minimum and without limitation, disciplinary action or counseling as appropriate under the circumstances;

(5) A procedure for a teacher or other school employee, student, parent, guardian, or other person who has control or charge of a student, either anonymously or in such person's name, at such person's option, to report or otherwise provide information on bullying activity;

(6) A statement prohibiting retaliation following a report of bullying; and

(7) Provisions consistent with the requirements of subsection (b) of this Code section.

(d) The Department of Education shall develop and post on its website a list of entities and their contact information which produce

antibullying training programs and materials deemed appropriate by the department for use in local school systems.

(e) Any person who reports an incident of bullying in good faith shall be immune from civil liability for any damages caused by such reporting.

(f) Nothing in this Code section or in the model policy promulgated by the Department of Education shall be construed to require a local board of education to provide transportation to a student transferred to another school as a result of a bullying incident.

(g) Any school system which is not in compliance with the requirements of subsection (b) of this Code section shall be ineligible to receive state funding pursuant to Code Sections 20-2-161 and 20-2-260. (Code 1981, § 20-2-751.4, enacted by Ga. L. 1999, p. 362, § 3; Ga. L. 2000, p. 136, § 20; Ga. L. 2010, p. 516, § 2/SB 250; Ga. L. 2011, p. 752, § 20/HB 142.)

**The 2010 amendment**, effective May 27, 2010, in subsection (a), added the language beginning with “an act which occurs” and ending with “school system, that is” in the introductory paragraph, deleted “or” from the end of paragraph (a)(1), added “; or” to the end of paragraph (a)(2), and added paragraph (a)(3); rewrote subsection (b); added present subsections (c) through (f); redesignated former subsection (c) as present subsection (g); and inserted “subsection (b) of” near the middle of present subsection (g). See the editor’s note for applicability.

**The 2011 amendment**, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (a)(3).

**Editor’s notes.** — Ga. L. 1999, p. 362, § 3 enacted this Code section; however, Ga. L. 1999, p. 376, § 1 also enacted a Code section originally designated as this Code section which was redesignated as Code Section 20-2-751.5.

Ga. L. 2010, p. 516, § 1/SB 250, not codified by the General Assembly, provides: “It is the intent of the General

Assembly that the model policy regarding bullying that is required to be promulgated by the Department of Education under this Act shall be utilized as a resource for the benefit of local school systems and shall not be used as a definition of the exclusive applicable standard of care in any civil or administrative action.”

Ga. L. 2010, p. 516, § 4/SB 250, not codified by the General Assembly, provides that the amendment of this Code section shall apply with respect to conduct on or after May 27, 2010, and conduct prior to that date shall continue to be governed by prior law.

**Law reviews.** — For article, “Defense Against Outrage and the Perils of Parasitic Torts,” see 45 Ga. L. Rev. 107 (2010). For article, “Bullying in Public Schools: The Intersection Between the Student’s Free Speech Rights and the School’s Duty to Protect,” see 62 Mercer L. Rev. 407 (2011).

For note, “Sticks and Stones and Shotguns at School: The Ineffectiveness of Constitutional Antibullying Legislation as a Response to School Violence,” see 39 Ga. L. Rev. 1109 (2005).

## JUDICIAL DECISIONS

**Cited in** *Chisolm v. Tippens*, 289 Ga. App. 757, 658 S.E.2d 147 (2008).



**20-2-751.5. Student codes of conduct; safety rules on school buses; distribution.**

(a) Each student code of conduct shall contain provisions that address the following conduct of students during school hours, at school related functions, and on the school bus in a manner that is appropriate to the age of the student:

(1) Verbal assault, including threatened violence, of teachers, administrators, and other school personnel;

(2) Physical assault or battery of teachers, administrators, and other school personnel;

(3) Disrespectful conduct toward teachers, administrators, and other school personnel, including use of vulgar or profane language;

(4) Verbal assault of other students, including threatened violence or sexual harassment as defined pursuant to Title IX of the Education Amendments of 1972;

(5) Physical assault or battery of other students, including sexual harassment as defined pursuant to Title IX of the Education Amendments of 1972;

(6) Disrespectful conduct toward other students, including use of vulgar or profane language;

(7) Verbal assault of, physical assault or battery of, and disrespectful conduct, including use of vulgar or profane language, toward persons attending school related functions;

(8) Failure to comply with compulsory attendance as required under Code Section 20-2-690.1;

(9) Willful or malicious damage to real or personal property of the school or to personal property of any person legitimately at the school;

(10) Inciting, advising, or counseling of others to engage in prohibited acts;

(11) Marking, defacing, or destroying school property;

(12) Possession of a weapon, as provided for in Code Section 16-11-127.1;

(13) Unlawful use or possession of illegal drugs or alcohol;

(14) Willful and persistent violation of the student code of conduct;

(15) Bullying as defined by Code Section 20-2-751.4;

(16) Marking, defacing, or destroying the property of another student; and

(17) Falsifying, misrepresenting, omitting, or erroneously reporting information regarding instances of alleged inappropriate behavior by a teacher, administrator, or other school employee toward a student.

With regard to paragraphs (9), (11), and (17) of this subsection, each student code of conduct shall also contain provisions that address conduct of students during off-school hours.

(b)(1) In addition to the requirements contained in subsection (a) of this Code section, each student code of conduct shall include comprehensive and specific provisions prescribing and governing student conduct and safety rules on all public school buses. The specific provisions shall include but not be limited to:

(A) Students shall be prohibited from acts of physical violence as defined by Code Section 20-2-751.6, bullying as defined by subsection (a) of Code Section 20-2-751.4, physical assault or battery of other persons on the school bus, verbal assault of other persons on the school bus, disrespectful conduct toward the school bus driver or other persons on the school bus, and other unruly behavior;

(B) Students shall be prohibited from using any electronic devices during the operation of a school bus, including but not limited to cell phones; pagers; audible radios, tape or compact disc players without headphones; or any other electronic device in a manner that might interfere with the school bus communications equipment or the school bus driver's operation of the school bus; and

(C) Students shall be prohibited from using mirrors, lasers, flash cameras, or any other lights or reflective devices in a manner that might interfere with the school bus driver's operation of the school bus.

(2) If a student is found to have engaged in physical acts of violence as defined by Code Section 20-2-751.6, the student shall be subject to the penalties set forth in such Code section. If a student is found to have engaged in bullying as defined by subsection (a) of Code Section 20-2-751.4 or in physical assault or battery of another person on the school bus, the local school board policy shall require a meeting of the parent or guardian of the student and appropriate school district officials to form a school bus behavior contract for the student. Such contract shall provide for progressive age-appropriate discipline, penalties, and restrictions for student misconduct on the bus. Contract provisions may include but shall not be not limited to assigned

seating, ongoing parental involvement, and suspension from riding the bus. This subsection is not to be construed to limit the instances when a school code of conduct or local board of education may require use of a student bus behavior contract.

(c) Each student code of conduct shall also contain provisions that address any off-campus behavior of a student which could result in the student being criminally charged with a felony and which makes the student's continued presence at school a potential danger to persons or property at the school or which disrupts the educational process.

(d) Local board policies relating to student codes of conduct shall provide that each local school superintendent shall fully support the authority of principals and teachers in the school system to remove a student from the classroom pursuant to Code Section 20-2-738, including establishing and disseminating procedures. It is the policy of this state that it is preferable to reassign disruptive students to alternative educational settings rather than to suspend or expel such students from school.

(e) Any student handbook which is prepared by a local board or school shall include a copy of the student code of conduct for that school or be accompanied by a copy of the student code of conduct for that school as annually distributed pursuant to Code Section 20-2-736. When distributing a student code of conduct, a local school shall include a form for acknowledgment of the student's parent or guardian's receipt of the code, and the local school shall solicit or require that the form be signed and returned to the school. (Code 1981, § 20-2-751.5, enacted by Ga. L. 1999, p. 370, § 1; Ga. L. 2000, p. 136, § 20; Ga. L. 2002, p. 1421, § 1; Ga. L. 2003, p. 140, § 20; Ga. L. 2004, p. 107, § 14; Ga. L. 2006, p. 851, § 7/SB 413; Ga. L. 2008, p. 214, § 1/HB 1321.)

**Cross references.** — School buses, T. 40, C. 6, A. 8.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1999, this Code section, originally designated as Code Section 20-2-751.4, was redesignated as Code Section 20-2-751.5.

**Law reviews.** — For article on 2006 amendment of this Code section, see 23 Ga. St. U. L. Rev. 129 (2006).

For notes on 1999 enactment of this Code section, see 16 Ga. St. U. L. Rev. 116, 128 (1999).

For comment, "From Backpacks to Blackberries: (Re)Examining New Jersey v. T.L.O. in the Age of the Cell Phone," see 61 Emory L. J. 111 (2011).

## RESEARCH REFERENCES

**Am. Jur. Proof of Facts.** — Teacher's Failure to Supervise Students, 4 POF2d 87.



**20-2-751.6. Disciplinary policy for students committing acts of physical violence against teacher, school bus driver, or other school official or employee.**

(a) As used in this Code section, the term “physical violence” means:

(1) Intentionally making physical contact of an insulting or provoking nature with the person of another; or

(2) Intentionally making physical contact which causes physical harm to another unless such physical contacts or physical harms were in defense of himself or herself, as provided in Code Section 16-3-21.

(b) Local board of education policies and student codes of conduct shall provide for the penalties to be assessed against a student found by a disciplinary hearing officer, panel, or tribunal pursuant to Code Section 20-2-752 to have committed any act of physical violence against a teacher, school bus driver, or other school official or employee. Such disciplinary hearing officer, panel, or tribunal shall hold any disciplinary hearing in accordance with the provisions of Code Section 20-2-754. Any student alleged to have committed an act of physical violence shall be suspended pending the hearing by the disciplinary hearing officer, panel, or tribunal. The decision of the disciplinary hearing officer, panel, or tribunal may be appealed to the local school board pursuant to Code Section 20-2-754. If appropriate under paragraph (1) of subsection (c) of this Code section, the decision of the disciplinary hearing officer, panel, or tribunal shall include a recommendation as to whether a student may return to public school and, if return is recommended, a recommended time for the student’s return to public school. The local school board may impose penalties not recommended by the disciplinary hearing officer, panel, or tribunal.

(c)(1) A student found by a disciplinary hearing officer, panel, or tribunal to have committed an act of physical violence as defined in paragraph (2) of subsection (a) of this Code section against a teacher, school bus driver, school official, or school employee shall be expelled from the public school system. The expulsion shall be for the remainder of the student’s eligibility to attend public school pursuant to Code Section 20-2-150. The local school board at its discretion may permit the student to attend an alternative education program for the period of the student’s expulsion. If the student who commits an act of physical violence is in kindergarten through grade eight, then the local school board at its discretion and on the recommendation of the disciplinary hearing officer, panel, or tribunal may permit such a student to reenroll in the regular public school program for grades nine through 12. If the local school board does not operate an alternative education program for students in kindergarten through

grade six, the local school board at its discretion may permit a student in kindergarten through grade six who has committed an act of physical violence as defined in paragraph (2) of subsection (a) of this Code section to reenroll in the public school system;

(2) Any student who is found by a disciplinary hearing officer, panel, or tribunal to have committed an act of physical violence against a teacher, school bus driver, school official, or school employee as defined in paragraph (2) of subsection (a) of this Code section shall be referred to juvenile court with a request for a petition alleging delinquent behavior; and

(3) Any student who is found by a disciplinary hearing officer, panel, or tribunal to have committed an act of physical violence as defined in paragraph (1) of subsection (a) of this Code section against a teacher, school bus driver, school official, or school employee may be disciplined by expulsion, long-term suspension, or short-term suspension.

(d) The provisions of this Code section shall apply with respect to any local school system which receives state funding pursuant to Code Sections 20-2-161 and 20-2-260.

(e) Nothing in this Code section shall be construed to infringe on any right provided to students with Individualized Education Programs pursuant to the federal Individuals with Disabilities Education Act, Section 504 of the federal Rehabilitation Act of 1973, or the federal Americans with Disabilities Act of 1990. (Code 1981, § 20-2-751.6, enacted by Ga. L. 2000, p. 1578, § 1; Ga. L. 2001, p. 4, § 20; Ga. L. 2002, p. 1421, § 2; Ga. L. 2004, p. 107, § 15.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2002, a comma was inserted before “if return is recommended,” in the fifth sentence of subsection (b), and “this” was inserted preceding “Code section” in subsection (d).

**U.S. Code.** — Section 504 of the federal

Rehabilitation Act of 1973, referred to in subsection (e), is codified as 29 U.S.C. § 701 et seq.

The federal Americans with Disabilities Act of 1990, referred to in subsection (e), is codified at 42 U.S.C. § 12101 et seq.

**20-2-751.7. State mandated process for students to follow in reporting instances of alleged inappropriate behavior by teacher or other school personnel; notice of process; training; investigations.**

(a) The Professional Standards Commission shall establish a state mandated process for students to follow in reporting instances of alleged inappropriate behavior by a teacher, administrator, or other school employee toward a student which shall not prohibit the ability of a student to report the incident to law enforcement authorities. Each local school system shall be required to implement and follow such state

mandated process and shall include the mandated process in student handbooks and in employee handbooks or policies.

(b) If it is determined through the state mandated process established pursuant to subsection (a) of this Code section that a complaint against a teacher, administrator, or other school employee is unsubstantiated and without merit, the local school system shall, at the request of the aggrieved party, submit a written statement to that effect to all local print and television media outlets that published any articles or reported any news relating to such complaint against the teacher, administrator, or employee.

(c) The Professional Standards Commission shall coordinate a training program on educator sexual misconduct. Such program shall be delivered by trained staff from the Professional Standards Commission, regional educational service agencies, and local school systems. The superintendent of each local school system shall ensure that all certified staff in its school system receive such training.

(d)(1) The staff of the Professional Standards Commission shall be authorized, without notification to the Professional Standards Commission, to immediately open an investigation submitted to the commission by a local school superintendent, with approval of the local board of education, of a complaint by a student against an educator alleging a sexual offense, as provided for in Code Sections 16-6-1 through 16-6-17, 16-6-20, 16-6-22.2, or 16-12-100.

(2) The Professional Standards Commission shall have on staff a minimum of one investigator specifically trained in investigating educator sexual misconduct. The investigation of any complaint of sexual misconduct shall be completed in no more than 60 days and shall be presented at the commission meeting immediately following the conclusion of the investigation.

(3) If the Professional Standards Commission's review of the investigative report results in a sanction against the educator, the educator shall have the right to appeal the commission decision to a hearing before an administrative law judge within 90 days of such sanction.

(e) Nothing in this Code section shall be construed to infringe on any right provided to students with Individualized Education Programs pursuant to the federal Individuals with Disabilities Education Act, Section 504 of the federal Rehabilitation Act of 1973, or the federal Americans with Disabilities Act of 1990. (Code 1981, § 20-2-751.7, enacted by Ga. L. 2008, p. 214, § 2/HB 1321.)

**U.S. Code.** — The Individuals with Disabilities Education Act, referred to in subsection (e), is codified at 20 U.S.C. § 1400 et seq.



Section 504 of the Rehabilitation Act of 1973, referred to in subsection (e), is codified at 29 U.S.C. § 794.

The Americans with Disabilities Act of 1990, referred to in subsection (e), is codified at 42 U.S.C. § 12101 et seq.

**20-2-752. Establishment of disciplinary hearing officers, panels, or tribunals for imposition of suspension or expulsion; rules and regulations; appeals.**

Local boards of education may establish by policy, rule, or regulation disciplinary hearing officers, panels, or tribunals of school officials to impose suspension or expulsion. If such hearing officers, panels, or tribunals are established, such rules and regulations must include the following:

(1) Provisions governing the manner of selecting the hearing officers or members of the panels or tribunals and the number of members thereof;

(2) Provisions governing procedures to be followed by such hearing officers, panels, or tribunals in fact-finding, hearings, and reporting recommendations to the local board;

(3) Provisions granting a right to appeal to the local board when the punishment imposed by hearing officers, panels, or tribunals is long-term suspension or expulsion; and

(4) Provisions whereby the local school superintendent may suspend enforcement of the suspension or expulsion ordered by the hearing officers, panels, or tribunals pending the outcome of any appeal to the local board. (Ga. L. 1979, p. 663, § 3.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 323 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 1091 et seq.

**20-2-753. Disciplinary hearing officer, panel, or tribunal to hold disciplinary hearing following allegation of assault and battery or recommended suspension or expulsion exceeding 10 days.**

(a) In addition to any proceedings which are authorized in Code Section 20-2-752, local boards of education shall appoint a disciplinary hearing officer, panel, or tribunal of school officials to hold a disciplinary hearing following any instance of an alleged violation of the student code of conduct where the principal recommends a suspension or expulsion of longer than ten school days or an alleged assault or battery by a student upon any teacher or other school official or employee, if such teacher or other school official or employee so requests.

(b) Nothing in this Code section shall be construed to infringe on any right provided to students with Individualized Education Programs pursuant to the federal Individuals with Disabilities Education Act, Section 504 of the federal Rehabilitation Act of 1973, or the federal Americans with Disabilities Act of 1990. (Code 1981, § 20-2-753, enacted by Ga. L. 1984, p. 908, § 1; Ga. L. 1985, p. 149, § 20; Ga. L. 1986, p. 10, § 20; Ga. L. 2004, p. 107, § 16.)

### JUDICIAL DECISIONS

**Cited** in Wayne County Bd. of Educ. v. Tyre, 199 Ga. App. 384, 404 S.E.2d 809 (1991).

#### **20-2-754. Procedures to be followed by disciplinary officer, panel, or tribunal; review.**

(a) The provisions of Code Section 20-2-1160 shall apply to disciplinary proceedings under this subpart.

(b) A disciplinary officer, panel, or tribunal of school officials appointed as required by Code Section 20-2-753 shall, in addition to any other requirements imposed by rules and regulations which may have been promulgated pursuant to Code Section 20-2-752, ensure that:

(1) All parties are afforded an opportunity for a hearing after reasonable notice served personally or by mail. This notice shall be given to all parties and to the parent or guardian of the student or students involved and shall include a statement of the time, place, and nature of the hearing; a short and plain statement of the matters asserted; and a statement as to the right of all parties to present evidence and to be represented by legal counsel;

(2) The hearing is held no later than ten school days after the beginning of the suspension unless the school system and parents or guardians mutually agree to an extension;

(3) All parties are afforded an opportunity to present and respond to evidence and to examine and cross-examine witnesses on all issues unresolved;

(4) Any teacher who is called as a witness by the school system shall be given notice no later than three days prior to the hearing; and

(5) A verbatim electronic or written record of the hearing shall be made and shall be available to all parties.

(c) If appointed to review an instance pursuant to Code Section 20-2-753, the disciplinary officer, panel, or tribunal shall conduct the

hearing and, after receiving all evidence, render its decision, which decision shall be based solely on the evidence received at the hearing. The decision shall be in writing and shall be given to all parties within ten days of the close of the record. Any decision by such disciplinary officer, panel, or tribunal may be appealed to the local board of education by filing a written notice of appeal within 20 days from the date the decision is rendered. Any disciplinary action imposed by such officer, panel, or tribunal may be suspended by the school superintendent pending the outcome of the appeal.

(d) The local board of education shall review the record and shall render a decision in writing. The decision shall be based solely on the record and shall be given to all parties within ten days, excluding weekends and public and legal holidays provided for in Code Section 1-4-1, from the date the local board of education receives the notice of appeal. The board may take any action it determines appropriate, and any decision of the board shall be final. All parties shall have the right to be represented by legal counsel at any such appeal and during all subsequent proceedings.

(e) Either or both parents or guardians or legal counsel of the student involved may obtain a copy of any documents relating to a disciplinary proceeding conducted pursuant to this Code section. (Code 1981, § 20-2-754, enacted by Ga. L. 1984, p. 908, § 1; Ga. L. 1985, p. 149, § 20; Ga. L. 1986, p. 10, § 20; Ga. L. 1986, p. 817, § 1; Ga. L. 1997, p. 1436, § 6; Ga. L. 2004, p. 107, § 17.)

**Editor's notes.** — Ga. L. 1997, p. 1436, § 1, not codified by the General Assembly, provides that the Act shall be known and may be cited as the "School Safety Act."

**Law reviews.** — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U. L. Rev. 155 (1997).

### JUDICIAL DECISIONS

**Cited** in *Wayne County Bd. of Educ. v. Tyre*, 199 Ga. App. 384, 404 S.E.2d 809 (1991).

### RESEARCH REFERENCES

**ALR.** — Admissibility of hearsay evidence in student disciplinary proceedings, 30 ALR4th 935.

### 20-2-755. Authorization of disciplinary officer, panel, or tribunal to determine disciplinary action.

The disciplinary officer, panel, or tribunal of school officials, when appointed as required in Code Section 20-2-753, shall determine what, if any, disciplinary action shall be taken. Such action may include, but



is not limited to, expulsion, long-term suspension, or short-term suspension. Any action taken by such officer, panel, or tribunal shall be subject to modification by the local school board on appeal. (Code 1981, § 20-2-755, enacted by Ga. L. 1984, p. 908, § 1.)

### **20-2-756. Reports to law enforcement officials.**

(a) The school administration, disciplinary hearing officer, panel, tribunal of school officials, or the local board of education may, when any alleged criminal action by a student occurs, report the incident to the appropriate law enforcement agency or officer for investigation to determine if criminal charges or delinquent proceedings should be initiated.

(b) No individual reporting any incident under this subpart to a law enforcement agency or officer shall be subject to any action for malicious prosecution, malicious abuse of process, or malicious use of process. (Code 1981, § 20-2-756, enacted by Ga. L. 1984, p. 908, § 1; Ga. L. 1997, p. 1436, § 7.)

**Editor's notes.** — Ga. L. 1997, p. 1436, § 1, not codified by the General Assembly, provides that the Act shall be known and may be cited as the "School Safety Act."

**Law reviews.** — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U. L. Rev. 155 (1997).

### **20-2-757. Applicability of public inspection and open meeting laws.**

(a) All proceedings and hearings conducted under this subpart shall be confidential and shall not be subject to the open meetings requirement of Code Section 50-14-1 or other open meetings laws.

(b) All electronic or other written records of all hearings conducted under this subpart; all statements of charges; all notices of hearings; and all written decisions rendered by a hearing officer, tribunal, the local board of education, or the State Board of Education shall not be subject to public inspection or other disclosure under Article 4 of Chapter 18 of Title 50 or other public disclosure laws; provided, however, the board of education shall prepare a written summary of any proceeding conducted under this subpart, which summary shall include a description of the incident and the disposition thereof but shall not contain the names of any party to the incident. The summary shall be a public record. (Code 1981, § 20-2-757, enacted by Ga. L. 1984, p. 908, § 1; Ga. L. 1985, p. 149, § 20; Ga. L. 1986, p. 10, § 20; Ga. L. 1989, p. 836, § 1.)

**20-2-758. Legal actions not prohibited, restricted, or limited by disciplinary hearing; rights to appeal from decision of school board.**

Nothing in this subpart shall be construed to prohibit, restrict, or limit in any manner any cause of action otherwise provided by law and available to any teacher, school official, employee, or student. The provisions of subsections (b) through (f) of Code Section 20-2-1160 shall apply to all proceedings under this subpart. (Code 1981, § 20-2-758, enacted by Ga. L. 1984, p. 908, § 1.)

**20-2-759. Children in kindergarten through grade five.**

Reserved. Repealed by Ga. L. 2004, p. 107, § 18, effective May 4, 2004.

**Editor's notes.** — This Code section 1987, p. 3, § 20; Ga. L. 1997, p. 1436, § 8; was based on Code 1981, § 20-2-759, enacted by Ga. L. 1986, p. 1079, § 1; Ga. L. 1997, p. 1436, § 8; Ga. L. 2002, p. 1421, § 3.

**Subpart 3**

**Chronic Disciplinary Problem Students**

**20-2-764. Definitions.**

As used in this subpart, the term:

(1) "Chronic disciplinary problem student" means a student who exhibits a pattern of behavioral characteristics which interfere with the learning process of students around him or her and which are likely to recur.

(2) "Expulsion" means expulsion of a student from a public school beyond the current school quarter or semester.

(3) "Suspension" means the short-term suspension of a student from a public school for not more than ten days or long-term suspension for more than ten days pursuant to Code Section 20-2-751. (Code 1981, § 20-2-764, enacted by Ga. L. 1995, p. 240, § 2; Ga. L. 1996, p. 6, § 20.)

**20-2-765. Notification of parent or guardian of chronic disciplinary problem student; observance of child by parent or guardian; attendance of conference with principal or teacher or both.**

Any time a teacher or principal identifies a student as a chronic disciplinary problem student, the principal shall notify by telephone

call and by either certified mail or statutory overnight delivery with return receipt requested or first-class mail the student's parent or guardian of the disciplinary problem, invite such parent or guardian to observe the student in a classroom situation, and request at least one parent or guardian to attend a conference with the principal or the teacher or both to devise a disciplinary and behavioral correction plan. (Code 1981, § 20-2-765, enacted by Ga. L. 1995, p. 240, § 2; Ga. L. 2000, p. 618, § 67; Ga. L. 2000, p. 1589, § 3.)

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the Act was applicable to notices delivered on or after July 1, 2000.

**20-2-766. Students returning from expulsion or suspension; notice to parents; conference with principal or teacher to devise disciplinary and behavioral correction plan.**

Before any chronic disciplinary problem student is permitted to return from an expulsion or suspension, the school to which the student is to be readmitted shall request by telephone call and by either certified mail or statutory overnight delivery with return receipt requested or first-class mail at least one parent or guardian to schedule and attend a conference with the principal or his or her designee to devise a disciplinary and behavioral correction plan. Failure of the parent or guardian to attend shall not preclude the student from being readmitted to the school. At the discretion of the principal, a teacher, counselor, or other person may attend the conference. The principal shall ensure that a notation of the conference is placed in the student's permanent file. (Code 1981, § 20-2-766, enacted by Ga. L. 1995, p. 240, § 2; Ga. L. 2000, p. 618, § 67; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 4, § 20.)

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the Act was applicable to notices delivered on or after July 1, 2000.

**20-2-766.1. Proceeding against parents for failure to cooperate in educational programs; penalty.**

The local board of education may, by petition to the juvenile court, proceed against a parent or guardian as provided in this Code section. If the court finds that the parent or guardian has willfully and unreasonably failed to attend a conference requested by a principal pursuant to Code Section 20-2-765 or 20-2-766, the court may order the



parent or guardian to attend such a conference, order the parent or guardian to participate in such programs or such treatment as the court deems appropriate to improve the student's behavior, or both. After notice and opportunity for hearing, the court may impose a fine, not to exceed \$500.00, on a parent or guardian who willfully disobeys an order of the court entered under this Code section. The court may use its contempt and other powers specified in Code Section 15-11-5 to enforce any order entered under this Code section. (Code 1981, § 20-2-766.1, enacted by Ga. L. 2000, p. 618, § 68.)

**Cross references.** — Parent and child relationship generally, T. 19, C. 7.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2000, "Code Section 15-11-5" was substituted for "Code Section 15-11-62" in the last sentence.

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

## Subpart 4

### Alternative Educational Systems

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1997, Code Sections 20-2-768 through 20-2-770 were

redesignated as Code Sections 20-2-767 through 20-2-769.

## 20-2-767. Definitions.

As used in this subpart, the term:

(1) "Expulsion" means expulsion of a student from a public school beyond the current school quarter or semester.

(2) "Suspension" means the short-term suspension of a student from a public school for not more than ten days or long-term suspension for more than ten days pursuant to Code Section 20-2-751. (Code 1981, § 20-2-767, enacted by Ga. L. 1997, p. 1436, § 9.)

**Editor's notes.** — Ga. L. 1997, p. 1436, § 1, not codified by the General Assembly,

provides that the Act shall be known and may be cited as the "School Safety Act."

## 20-2-768. Expulsion or suspension of students for felonies; alternative educational system; policy.

(a) Each local board of education is authorized to refuse to readmit or enroll any student who has been suspended or expelled for being convicted of, being adjudicated to have committed, being indicted for, or having information filed for the commission of any felony or any delinquent act under Code Section 15-11-28 which would be a felony if committed by an adult. If refused readmission or enrollment, the

student or the student’s parent or legal guardian has the right to request a hearing pursuant to the procedures provided for in Code Section 20-2-754.

(b) A hearing officer, tribunal, panel, superintendent, or local board of education shall be authorized to place a student denied enrollment in a local school system under subsection (a) of this Code section in an alternative educational system as appropriate and in the best interest of the student and the education of other students within the school system.

(c) It is the policy of this state that it is preferable to reassign disruptive students to alternative educational settings rather than to suspend or expel such students from school. (Code 1981, § 20-2-768, enacted by Ga. L. 1997, p. 1436, § 9; Ga. L. 2000, p. 20, § 18; Ga. L. 2000, p. 618, § 66.)

**Editor’s notes.** — Ga. L. 1997, p. 1436, § 1, not codified by the General Assembly, provides that the Act shall be known and may be cited as the “School Safety Act.”

Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act

shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

**Law reviews.** — For article commenting on the enactment of this Code section, see 14 Ga. St. U. L. Rev. 155 (1997).

**20-2-769. Alternative educational programs; grants; annual reports.**

Repealed by Ga. L. 2000, p. 618, § 69, effective July 1, 2000.

**Editor’s notes.** — This Code section was based on Code 1981, § 20-2-769, enacted by Ga. L. 1997, p. 1436, § 9; Ga. L. 1998, p. 128, § 20; Ga. L. 1999, p. 438, § 6.

Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

PART 3

HEALTH

**20-2-770. Rules and regulations for nutritional screening and eye, ear, and dental examinations of students.**

The Department of Public Health is authorized and directed, in cooperation with the State Board of Education, to promulgate rules and regulations to provide for a nutritional screening and eye, ear, and dental examinations for each student entering the first grade in the public schools of this state and at such other times as such rules and regulations shall provide. Such rules and regulations shall provide procedures for local boards of health to provide for such examinations and screenings and for the issuance of a certificate to the parent or

parents of children entering the first grade indicating that such examinations and screenings have been made, and such certificates shall be turned in to the school officials at the time of enrollment. Such rules and regulations shall further provide that the examinations and screenings required in this Code section may be made by private practitioners and authorize the certification provided for in this Code section by such private practitioners. (Ga. L. 1972, p. 214, § 1; Ga. L. 1976, p. 616, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

**The 2011 amendment**, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in the first sentence of this Code section.

**Administrative rules and regulations.** — School nutrition program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Chapter 160-5-6.

Eye, ear and dental examinations of children entering public schools, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Chapter 290-5-31.

**Law reviews.** — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

## OPINIONS OF THE ATTORNEY GENERAL

**Section places upon local boards of health the responsibility for employing necessary personnel and facilities** for making the required examinations. 1972 Op. Att’y Gen. No. 72-176.

**Unless funds unavailable obligations cannot be avoided.** — Absent a showing that there is a lack of funds and

an inability to obtain the funds and that, as a result thereof, performance of the Department of Human Resources’ (now Department of Community Health) obligations imposed by this section is impossible, the statutory obligations cannot be avoided. 1972 Op. Att’y Gen. No. 72-176 (see O.C.G.A. § 20-2-770).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 344.

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 993, 1004.

## 20-2-771. Immunization of students.

(a) As used in this Code section, the term:

(1) “Certificate of immunization” means certification by a physician licensed under the laws of this state or by an appropriate official of a local board of health, on a form provided by the Department of Public Health, that a named person has been immunized in accordance with the applicable rules and regulations of the Department of Public Health.

(2) “Facility” means any public or private day-care center or nursery intended for the care, supervision, or instruction of children.



(3) "Responsible official" means a county school superintendent, a school principal, or a chief operating officer of a school or facility.

(4) "School" means any public or private educational program or institution instructing children at any level or levels, kindergarten through twelfth grade, or children of ages five through 19 if grade divisions are not used.

(b) No child shall be admitted to or attend any school or facility in this state unless the child shall first have submitted a certificate of immunization to the responsible official of the school or facility. The responsible official of any school or facility may grant a 30 calendar day waiver of the certification requirement for a justified reason. The waiver may be extended from the date of first admittance or of first attendance, whichever is earlier, for up to 90 calendar days provided documentation is on file at the school or facility from the local health department or a physician specifying that an immunization sequence has been started and that this immunization time schedule can be completed within the 90 day waiver period, provided confirmation is received during the waiver period from the health department or physician that immunizations are being received as scheduled, and provided the student under waiver is a transfer student, who is defined as a student who moves from an out-of-state school system to a Georgia school system, or a student entering kindergarten or first grade from out of state. The waiver may not be extended beyond 90 calendar days; and upon expiration of the waiver, the child shall not be admitted to or be permitted to attend the school or facility unless the child submits a certificate of immunization.

(c) The Department of Public Health shall promulgate rules and regulations specifying those diseases against which immunization is required and the standards for such immunizations. The school or facility shall maintain on file the certificates of immunization for all children attending the school or facility. All facilities shall file a report annually with the Department of Public Health. The report shall be filed on forms prepared by the Department of Public Health and shall state the number of children attending the school or facility, the number of children who did not submit certificates of immunization within the waiver period, and the number of children who are exempted from the certification requirement for medical or religious reasons.

(d) If, after examination by the local board of health or any physician licensed under the laws of this state or of any other state having comparable laws governing the licensure of physicians, any child to whom this Code section applies is found to have any physical disability which may make vaccination undesirable, a certificate to that effect issued by the local board of health or such physician licensed under the laws of this or such other state may be accepted in lieu of a certificate

of immunization and shall exempt the child from the requirement of obtaining a certificate of immunization until the disability is relieved.

(e) This Code section shall not apply to a child whose parent or legal guardian objects to immunization of the child on the grounds that the immunization conflicts with the religious beliefs of the parent or guardian; however, the immunization may be required in cases when such disease is in epidemic stages. For a child to be exempt from immunization on religious grounds, the parent or guardian must first furnish the responsible official of the school or facility an affidavit in which the parent or guardian swears or affirms that the immunization required conflicts with the religious beliefs of the parent or guardian.

(f) During an epidemic or a threatened epidemic of any disease preventable by an immunization required by the Department of Public Health, children who have not been immunized may be excluded from the school or facility until (1) they are immunized against the disease, unless they present valid evidence of prior disease, or (2) the epidemic or threat no longer constitutes a significant public health danger.

(g) The requirement of a certificate of immunization shall become effective for all children entering or attending facilities on or after April 7, 1981. The certification requirement shall apply to all children entering or attending schools:

(1) On September 1, 1981, for all such children entering or attending kindergarten or the first, ninth, tenth, eleventh, or twelfth grades, or of the equivalent ages if grade divisions are not used;

(2) On September 1, 1982, for all such children entering or attending all grades, or of all ages if grade divisions are not used.

(h) Any responsible official permitting any child to remain in a school or facility in violation of this Code section, and any parent or guardian who intentionally does not comply with this Code section, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$100.00 or by imprisonment for not more than 12 months. The Department of Public Health may adopt rules and regulations for the enforcement of this Code section. The Department of Public Health and the local board of health, or either of them, may institute a civil action in the superior court of the county in which the defendant resides for injunctive relief to prevent a threatened or continuing violation of any provision of this Code section. (Ga. L. 1880-81, p. 98, § 1; Ga. L. 1919, p. 288, § 87; Code 1933, § 32-911; Ga. L. 1946, p. 206, § 2; Ga. L. 1957, p. 455, § 1; Ga. L. 1964, p. 499, § 6; Ga. L. 1968, p. 1436, § 1; Ga. L. 1972, p. 1069, § 3; Ga. L. 1973, p. 910, §§ 1, 2; Ga. L. 1978, p. 941, § 1; Ga. L. 1979, p. 1284, § 1; Ga. L. 1981, p. 756, § 1; Ga. L. 1987, p. 319, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

**The 2011 amendment**, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” throughout this Code section.

**Administrative rules and regulations.** — Immunization of children as a prerequisite to admission to schools and other facilities, Official Compilation of the Rules and Regulations of the State of

Georgia, Department of Human Resources, Chapter 290-5-4.

**Law reviews.** — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

For comment, “Public Health vs. Patient Rights: Reconciling Informed Consent with HPR Vaccination,” see 58 Emory L.J. 761 (2009).

## JUDICIAL DECISIONS

**Right to lodge religious objection to a child’s immunization** pursuant to O.C.G.A. § 20-2-771(e), O.C.G.A. § 31-12-3(b), or O.C.G.A. § 49-4-183(b)(10)(C) was not a residual right of the child’s parents under O.C.G.A. § 15-11-13; thus, the mother of a child found to be deprived could not object to the immunization of the child on religious grounds. In re C.R., 257 Ga. App. 159, 570 S.E.2d 609 (2002).

**Parents obligated to send children**

**to school under rules fixed by authorities.** — Statutes impose upon the parents of school age children the duty of sending the parents’ children to school and upon the school authorities the duty of fixing the rules and regulations under which the children shall attend. *Anderson v. State*, 84 Ga. App. 259, 65 S.E.2d 848 (1951) (decided under former Code 1933, § 32-911, prior to revision by Ga. L. 1981, p. 756, § 1).

## OPINIONS OF THE ATTORNEY GENERAL

**Students in public schools must be vaccinated** against poliomyelitis and smallpox unless the students are exempt by reason of religion or health. 1962 Op. Att’y Gen. p. 424.

**Exemption does not conflict with required examination for participation in interscholastic athletic activities.** — Since the subject matter of this section is compulsory medical treatment (i.e., immunization), the limited exemption provided in connection with “religious beliefs” does not conflict with the State Board of Education policy or standard which requires a student to be examined by a physician as a condition of his or her participation in interscholastic athletic activities. 1977 Op. Att’y Gen. No. 77-78 (see O.C.G.A. § 20-2-771).

**Section, strictly construed, applies only to county boards of education** and should not be extended by construction or implication so as to repeal or amend the constitutional and statutory provisions applicable to the powers of the Board of Regents of the University System of Georgia to make rules and regulations with respect to entrance requirements for any of the state’s institutions, including admission requirements concerning physical examinations, vaccination against smallpox, and immunization against tetanus and poliomyelitis. 1960-61 Op. Att’y Gen. p. 571 (decided under former Code 1933, § 32-911, prior to revision by Ga. L. 1981, p. 756, § 1).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 344 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 1005 et seq.

**ALR.** — Power of municipal or school authorities to prescribe vaccination or

other health measure as a condition of school attendance, 93 ALR 1413.

Power of court or other public agency to order medical treatment over parental religious objections for child whose life is not immediately endangered, 21 ALR5th 248.



**20-2-771.1. Voluntary preenrollment of children.**

Reserved. Repealed by Ga. L. 2012, p. 358, § 35/HB 706, effective July 1, 2012.

**Editor's notes.** — This Code section was based on Ga. L. 2000, p. 618, § 70.

**20-2-771.2. School health nurse programs.**

(a) Each local board of education shall establish policies and procedures regarding a school health nurse program. Such school health nurse programs shall be staffed by licensed health care professionals and may include consultation with offsite health care professionals through appropriate protocols and contracts. Each local board of education may contract or consult with health professionals knowledgeable in children's health issues to establish the standards, policies, and procedures of a school health nurse program. Such standards, policies, and procedures shall be in accordance with the restrictions set forth in Code Section 20-2-773.

(b) Subject to appropriations, there may be established within the Department of Education a school health nurse program coordinator, whose responsibilities may include:

(1) Assisting local school systems in establishing and implementing the school health nurse programs required by subsection (a) of this Code section, including development of guidelines for utilizing volunteers and retirees to supplement the programs;

(2) Assisting in standardizing the reporting of any health information from local school systems;

(3) Assisting local school systems in identifying and obtaining available additional funding and support for school health nurse programs from federal and other sources, including, but not limited to, Medicaid funds and partnerships with local hospitals or other health care facilities; and

(4) Other related duties to support school health nurse programs. (Code 1981, § 20-2-771.2, enacted by Ga. L. 2000, p. 618, § 71; Ga. L. 2012, p. 336, § 1/SB 183; Ga. L. 2012, p. 372, § 3/SB 403.)

**The 2012 amendments.** — The first 2012 amendment, effective July 1, 2012, inserted "and may include consultation with offsite health care professionals through appropriate protocols and contracts" at the end of the second sentence. The second 2012 amendment, effective

July 1, 2012, added the subsection (a) designation; and added subsection (b).

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

**20-2-772. Rules and regulations for screening of students for scoliosis.**

(a) In addition to any other requirements of this part, the Department of Public Health is authorized and directed, in cooperation with the State Board of Education, to promulgate rules and regulations to provide for the screening of public school children for scoliosis.

(b) The rules and regulations promulgated pursuant to subsection (a) of this Code section shall not require the prior approval of parents or legal guardians of public school children for the screening of such school children for scoliosis. However, such rules and regulations shall provide for advance written notice of the time of such screening to be given to parents and legal guardians of such public school children. If the parent or legal guardian of a child objects to such child being screened for scoliosis, such child shall be exempt from such screening. (Code 1981, § 20-2-772, enacted by Ga. L. 1983, p. 1547, § 1; Ga. L. 1985, p. 424, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

**The 2011 amendment**, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in subsection (a).

**Administrative rules and regulations.** — Screening of public school children for scoliosis, Official Compilation of

the Rules and Regulations of the State of Georgia, Department of Human Resources, Public Health, Chapter 290-5-47.

**Law reviews.** — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

**20-2-773. Restrictions on student health services; utilization of state funds.**

(a) No facility operated on public school property or operated by a public school district and no employee of any such facility acting within the scope of such employee’s employment shall provide any of the following health services to public school students:

- (1) Distribution of contraceptives;
- (2) Performance of abortions;
- (3) Referrals for abortion; or
- (4) Dispensing abortifacients.

(b) The Department of Education and local units of administration are prohibited from utilizing state funds for the distribution of contraceptives. (Code 1981, § 20-2-773, enacted by Ga. L. 1988, p. 868, § 2.)

**20-2-774. Self-administration of asthma medication.**

(a) As used in this Code section, the term:

(1) “Medication” means a medicine prescribed by:

(A) A physician licensed under Chapter 34 of Title 43; or

(B) A physician assistant licensed under Chapter 34 of Title 43 who is authorized to prescribe medicine for the treatment of asthma in accordance with said chapter.

(2) “Self-administration of asthma medication” means a student’s discretionary use of asthma medication prescribed for him or her.

(b) Each local board of education shall adopt a policy authorizing the self-administration of asthma medication by a student who has asthma, provided that any student who is authorized for self-administration of asthma medication under such policy may possess and use his or her asthma medication:

(1) While in school;

(2) At a school sponsored activity;

(3) While under the supervision of school personnel; or

(4) While in before-school or after-school care on school operated property.

(c) Each public school in this state shall permit the self-administration of asthma medication by a student who has asthma, subject to the local policy adopted pursuant to subsection (b) of this Code section; and the school district and its employees and agents shall incur no liability other than for willful or wanton misconduct for any injury to a student caused by his or her self-administration of asthma medication. (Code 1981, § 20-2-774, enacted by Ga. L. 2002, p. 1145, § 2; Ga. L. 2009, p. 859, § 3/HB 509.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2002, a colon was inserted following “by” in paragraph (a)(1).

**Editor’s notes.** — Ga. L. 2002, p. 1145,

§ 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Kellen Edwin Bolden Act.’”

**20-2-775. Automated external defibrillator required in high schools; requirements; funding.**

(a) As used in this Code section, the term “automated external defibrillator” means a defibrillator which:

(1) Is capable of cardiac rhythm analysis;



(2) Will charge and be capable of being activated to deliver a countershock after electrically detecting the presence of certain cardiac dysrhythmias; and

(3) Is capable of continuously recording cardiac dysrhythmia at the scene with a mechanism for transfer and storage or for printing for review subsequent to use.

(b) No later than July 1, 2008, each public high school in this state which has an interscholastic athletics program shall have at least one functional automated external defibrillator on site at such school at all times and easily accessible during any school related function, including athletic practices, athletic competitions, and other occasions where students and others will be present, for use during emergencies.

(c) Each high school possessing and maintaining an automated external defibrillator shall:

(1) Ensure that expected users of the automated external defibrillator receive American Heart Association or American Red Cross training in cardiopulmonary resuscitation and automated external defibrillator use or complete an equivalent nationally recognized course;

(2) Notify the appropriate emergency medical services system of the existence and location of the automated external defibrillator prior to said automated external defibrillator being placed in use;

(3) Ensure that the automated external defibrillator is maintained and tested according to the manufacturer's operational guidelines;

(4) Ensure that there is involvement of a licensed physician or other person authorized by the Georgia Composite Medical Board in the site's automated external defibrillator program to ensure compliance with requirements for training, notification, and maintenance; and

(5) Ensure that designated personnel activate the emergency medical services system as soon as reasonably possible after any person renders emergency care or treatment to a person in cardiac arrest by using an automated external defibrillator and reports any clinical use of the automated external defibrillator to the licensed physician or other person authorized by the Georgia Composite Medical Board who is supervising the program.

(d) Subject to appropriations by the General Assembly, the Department of Education shall provide funds to local school systems to assist in the purchase of automated external defibrillators pursuant to this Code section.

(e) The department and local school systems shall use diligent efforts to identify private sources of funding or donation of funding and

equipment to meet the requirements of this Code section. (Code 1981, § 20-2-775, enacted by Ga. L. 2008, p. 1158, § 2/HB 1031.)

**Cross references.** — Automated external defibrillator program, § 31-11-53.1. Immunity for certain operators of external defibrillators, § 51-1-29.3.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2012, “Georgia Composite Medical Board” was substituted for “composite board” in paragraphs (c)(4) and (c)(5).

**Editor’s notes.** — Ga. L. 2008, p. 1158, § 1/HB 1031, not codified by the General Assembly, provides: “The General Assembly finds that, although rare, sudden death in teenagers does occur. The Gen-

eral Assembly further finds that in recent years, there have been instances of cardiac arrest in high school students participating in interscholastic athletic events and practices. In instances of cardiac arrest, time is critical, and even with quick response from emergency personnel, it may not be fast enough for successful cardiopulmonary resuscitation. The General Assembly finds that automated external defibrillators are inexpensive and are not difficult to operate by lay persons as well as trained emergency personnel.”

## **20-2-776. “Auto-injectable epinephrine” defined; requirements for student retention of medication; liability of school system.**

(a) As used in this Code section, the term “auto-injectable epinephrine” means a disposable drug delivery device that is easily transportable and contains a premeasured single dose of epinephrine used to treat life-threatening allergic reactions.

(b) Each local board of education shall adopt a policy authorizing a student to carry and self-administer prescription auto-injectable epinephrine. Such policy shall provide that in order to carry and self-administer prescription auto-injectable epinephrine, the student’s parent or guardian shall provide:

(1) A written statement from a physician licensed under Chapter 34 of Title 43 detailing the name of the medication, method, amount, and time schedules by which the medication is to be taken, and confirming that the student is able to self-administer auto-injectable epinephrine; and

(2) A written statement by the parent or guardian consenting to the self-administration, providing a release for the school nurse or other designated school personnel to consult with the physician regarding any questions that may arise with regard to the medication, and releasing the school system and its employees and agents from civil liability if the self-administering student suffers an adverse reaction as a result of self-administering auto-injectable epinephrine pursuant to this Code section.

The written statements specified in this subsection shall be provided at least annually and more frequently if the medication, dosage, frequency of administration, or reason for administration changes.

(c) The policy adopted pursuant to subsection (b) of this Code section shall include provisions to protect the safety of all students from the misuse or abuse of auto-injectable epinephrine.

(d) Any student who is authorized for self-administration of epinephrine pursuant to this Code section may possess and use auto-injectable epinephrine:

(1) While in school;

(2) At a school sponsored activity;

(3) While under the supervision of school personnel; or

(4) While in before-school or after-school care on school operated property.

(e) A student may be subject to disciplinary action if he or she uses auto-injectable epinephrine in a manner other than as prescribed.

(f) A local school system and its employees and agents shall incur no liability other than for willful or wanton misconduct for any injury to a student caused by his or her use of auto-injectable epinephrine.

(g) Nothing in this Code section shall be construed to prohibit a school from receiving and storing prescription auto-injectable epinephrine onsite on behalf of a student who is not able to self-administer the medication because of age or any other reason if the parent or guardian provides:

(1) A written statement from a physician licensed under Chapter 34 of Title 43 detailing the name of the medication, method, amount, and time schedules by which the medication is to be taken; and

(2) A written statement by the parent or guardian providing a release for the school nurse or other designated school personnel to consult with the physician regarding any questions that may arise with regard to the medication, and releasing the school system and its employees and agents from civil liability.

The written statements specified in this subsection shall be provided at least annually and more frequently if the medication, dosage, frequency of administration, or reason for administration changes. (Code 1981, § 20-2-776, enacted by Ga. L. 2009, p. 31, § 1/SB 8; Ga. L. 2011, p. 353, § 1/HB 227.)

**The 2011 amendment**, effective July 1, 2011, added subsection (g).



**20-2-776.1. Administration of auto-injectable epinephrine by school personnel.**

(a) As used in this Code section, the term “auto-injectable epinephrine” means a disposable drug delivery device that is easily transportable and contains a premeasured single dose of epinephrine used to treat life-threatening allergic reactions.

(b) Each local board of education shall adopt a policy authorizing school personnel to administer auto-injectable epinephrine, if available, to a student upon the occurrence of an actual or perceived anaphylactic adverse reaction by the student, whether or not such student has a prescription for epinephrine.

(c) Each local board of education shall provide information to school personnel on how to recognize the symptoms of anaphylactic shock and the correct method of administering the auto-injectable epinephrine.

(d) Any school personnel who in good faith administers or chooses not to administer epinephrine to a student pursuant to this Code section shall be immune from civil liability for any act or omission to act related to the administration of epinephrine, except that such immunity shall not apply to an act of willful or wanton misconduct. (Code 1981, § 20-2-776.1, enacted by Ga. L. 2011, p. 353, § 2/HB 227.)

**Effective date.** — This Code section became effective July 1, 2011.

**20-2-777. Annual fitness assessment program; reporting and compliance.**

(a)(1) Beginning in the 2011-2012 school year, each local school system shall conduct an annual fitness assessment program, as approved and funded by the State Board of Education, one time each school year for students in grades one through 12, to be conducted only during a physical education course that is taught by a certificated physical education teacher in which a student is enrolled. Such assessments shall include methods deemed by the State Board of Education as appropriate to ascertain levels of student physical fitness. Each local school system shall report the individual results of the fitness assessment to the parent or guardian of each student assessed and the aggregate results of the fitness assessments by school to the State Board of Education annually in a format approved and funded by the State Board of Education. The minimum required contents of the report shall be determined by the State Board of Education.

(2) Each local school system shall be required to provide at least the minimum instruction in physical education prescribed by the

State Board of Education in rules and regulations established pursuant to subsection (c) of Code Section 20-2-142.

(b) The State Board of Education shall be responsible for the coordination of health and physical education and fitness activities and requirements, including, but not limited to, modification or promulgation of rules and regulations related thereto. The State Board of Education shall adopt and disseminate to local school systems standards which adequately express the most current and widely accepted best practices and benchmarks in the areas of student health and physical education. The State Board of Education's efforts may be supported with state, federal, or private funding or a combination thereof.

(c) The State Board of Education shall submit an annual report to the Governor, beginning October 1, 2012, and annually thereafter. Such report shall include the compliance status of each local school system and each school with applicable State Board of Education rules and regulations. The Governor may, in coordination with the State Board of Education, establish one or more recognition programs to acknowledge local school systems and schools which have most improved in their physical fitness assessments. The Governor may collaborate with private corporations in the development and implementation of recognition programs pursuant to this subsection, including providing monetary or other incentives to local school systems or schools for attaining certain levels of health status. All local school systems or schools receiving acknowledgment through a recognition program established by the Governor pursuant to this subsection shall also be recognized on the State Board of Education's website.

(d) This Code section, except for subsection (b), shall be repealed on June 30, 2019. (Code 1981, § 20-2-777, enacted by Ga. L. 2009, p. 191, § 1/HB 229.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2009, Code Section 20-2-776, as enacted by Ga. L. 2009, p. 191, § 1, was redesignated as Code Section 20-2-777.

## **20-2-778. Required information to parents of students regarding meningococcal meningitis.**

(a) If a local board of education provides information on immunizations, infectious diseases, medications, or other school health issues to parents and guardians of students in grades six through 12, then the following information about meningococcal meningitis disease and its vaccine shall be included:

- (1) A description of causes, symptoms, and means of transmission;
- (2) A list of sources for additional information; and

(3) Related recommendations issued by the federal Centers for Disease Control and Prevention.

(b) The Department of Education, in cooperation with the Department of Public Health, shall develop and make available the information about meningococcal meningitis disease and its vaccine to local school systems as required under subsection (a) of this Code section in an efficient manner that shall include posting the information on its website. (Code 1981, § 20-2-778, enacted by Ga. L. 2009, p. 785, § 1/HB 300; Ga. L. 2011, p. 705, § 6-3/HB 214.)

**The 2011 amendment**, effective July 1, 2011, substituted “Department of Public Health” for “Department of Community Health” in subsection (b).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2009, Code

Section 20-2-776, as enacted by Ga. L. 2009, p. 785, § 1, was redesignated as Code Section 20-2-778.

**Law reviews.** — For article on 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

**20-2-779. Care of students with diabetes; definitions; training of school employees; diabetes medical management plan; no liability for staff; application to private schools.**

(a) As used in this Code section, the term:

(1) “Diabetes medical management plan” means a document developed by the student’s physician or other health care provider that sets out the health services, including the student’s target range for blood glucose levels, needed by the student at school and is signed by the student’s parent or guardian.

(2) “School” means any primary or secondary public school located within this state.

(3) “School employee” means any person employed by a local board of education or state chartered special school or any person employed by a local health department who is assigned to a public school.

(4) “Trained diabetes personnel” means a school employee who volunteers to be trained in accordance with this Code section. Such employee shall not be required to be a health care professional.

(b)(1) No later than August 1, 2012, the Department of Education, in conjunction with the Georgia Association of School Nurses, shall develop guidelines for the training of school employees in the care needed for students with diabetes. The training guidelines shall include instruction in:

(A) Recognition and treatment of hypoglycemia and hyperglycemia;



(B) Understanding the appropriate actions to take when blood glucose levels are outside of the target ranges indicated by a student's diabetes medical management plan;

(C) Understanding physician instructions concerning diabetes medication dosage, frequency, and the manner of administration;

(D) Performance of finger-stick blood glucose checking, ketone checking, and recording the results;

(E) Administration of insulin and glucagon, an injectable used to raise blood glucose levels immediately for severe hypoglycemia, and the recording of results;

(F) Performance of basic insulin pump functions;

(G) Recognizing complications that require emergency assistance; and

(H) Recommended schedules and food intake for meals and snacks, the effect of physical activity upon blood glucose levels, and actions to be implemented in the case of schedule disruption.

(2) Each local board of education and state chartered special school shall ensure that the training outlined in paragraph (1) of this subsection is provided to a minimum of two school employees at each school attended by a student with diabetes.

(3) A school employee shall not be subject to any penalty or disciplinary action for refusing to serve as trained diabetes personnel.

(4) The training outlined in paragraph (1) of this subsection shall be coordinated and provided by a school nurse or may be contracted out to be provided by another health care professional with expertise in diabetes. Such training shall take place prior to the commencement of each school year, or as needed when a student with diabetes is newly enrolled at a school or a student is newly diagnosed with diabetes. The school nurse or other contracted health care professional shall provide follow-up training and supervision.

(5) Each local school system and state chartered special school shall provide information in the recognition of diabetes related emergency situations to all bus drivers responsible for the transportation of a student with diabetes.

(c) The parent or guardian of each student with diabetes who seeks diabetes care while at school shall submit to the school a diabetes medical management plan which upon receipt shall be reviewed and implemented by the school.

(d)(1) In accordance with the request of a parent or guardian of a student with diabetes and the student's diabetes medical manage-

ment plan, the school nurse or, in the absence of the school nurse, trained diabetes personnel shall perform functions including, but not limited to, responding to blood glucose levels that are outside of the student's target range; administering glucagon; administering insulin, or assisting a student in administering insulin through the insulin delivery system the student uses; providing oral diabetes medications; checking and recording blood glucose levels and ketone levels, or assisting a student with such checking and recording; and following instructions regarding meals, snacks, and physical activity.

(2) The school nurse or at least one trained diabetes personnel shall be on site at each school and available during regular school hours to provide care to each student with diabetes as identified pursuant to subsection (c) of this Code section. For purposes of field trips, the parent or guardian, or designee of such parent or guardian, of a student with diabetes may accompany such student on a field trip.

(3) There shall be trained diabetes personnel at each school where a student with diabetes is enrolled, and a student's school choice shall in no way be restricted because the student has diabetes.

(4) The activities set forth in paragraph (1) of this subsection shall not constitute the practice of nursing and shall be exempted from all applicable statutory and regulatory provisions that restrict what activities can be delegated to or performed by a person who is not a licensed health care professional.

(e) Upon written request of a student's parent or guardian and if authorized by the student's diabetes medical management plan, a student with diabetes shall be permitted to perform blood glucose checks, administer insulin through the insulin delivery system the student uses, treat hypoglycemia and hyperglycemia, and otherwise attend to the monitoring and treatment of his or her diabetes in the classroom, in any area of the school or school grounds, and at any school related activity, and he or she shall be permitted to possess on his or her person at all times all necessary supplies and equipment to perform such monitoring and treatment functions.

(f) No physician, nurse, school employee, local school system, or state chartered special school shall be liable for civil damages or subject to disciplinary action under professional licensing regulations or school disciplinary policies as a result of the activities authorized or required by this Code section when such acts are committed as an ordinarily reasonably prudent physician, nurse, school employee, local school system, or state chartered special school would have acted under the same or similar circumstances.

(g) A private school which complies with the requirements of this Code section shall have the same limited liability for such school and its

employees in the same manner as for public schools as provided for in subsection (f) of this Code section. (Code 1981, § 20-2-779, enacted by Ga. L. 2012, p. 86, § 2/HB 879.)

**Effective date.** — This Code section became effective July 1, 2012.

**Cross references.** — Diabetes coordinator, § 31-2A-13.

**Editor's notes.** — Ga. L. 2012, p. 86, § 1/HB 879, not codified by the General Assembly, provides that: "The General Assembly finds that:

"(1) Diabetes is a serious, chronic disease that impairs the body's ability to use food. Diabetes must be managed 24 hours a day in order to avoid the potentially life-threatening consequences of blood glucose levels that are either too high (hyperglycemia) or too low (hypoglycemia), and to avoid or delay the serious long-term complications of high blood glucose levels which include blindness, amputation, heart disease, and kidney failure.

"(2) In order to manage their disease, students with diabetes must have access to the means to balance food, medications, and physical activity levels while at school and at school related activities;

"(3) Diabetes is generally a self-managed disease, and many students with diabetes are able to perform most of their own diabetes care tasks. Such students should be permitted to do so in the school setting. However, some students, because of age, inexperience, or other factors, need help with some or all of diabetes

care tasks, and all students will need help in the event of a diabetes emergency;

"(4) The school nurse is the preferred person in the school setting to provide or facilitate care for a student with diabetes. Many schools in Georgia, however, do not have a full-time nurse, or a school nurse may not always be available on site. Thus, even when a nurse is assigned to a school full time, he or she will not always be available to provide direct care during the school day;

"(5) Diabetes management is needed at all times. Additional school personnel, who have completed training coordinated by the school nurse or other health care professional and who provide care under the supervision of the school nurse or other health care professional, need to be prepared to perform diabetes care tasks at school when a school nurse or other health care professional is not available. Preparations are needed to ensure that students with diabetes will be medically safe and have the same access to educational opportunities as all students in Georgia; and

"(6) Due to the significant number of students with diabetes, the effect of diabetes upon a student's ability to learn, and the risk for serious long-term and short-term medical complications, legislation in this state is necessary to address this issue."

## PART 4

### REMOVAL OF CHILD FROM SCHOOL TO GAIN CUSTODY

## **20-2-780. Change of custody of minor child by removing child from premises of private or public school prohibited.**

(a) No person shall make or attempt to make a change of custody of a minor child by removing the child from the premises of a private or public elementary or secondary school without the permission of the person who enrolled the child in the school, notwithstanding the fact that the person seeking to obtain custody of the child from the school has a court order granting custody of the child to such person.

(b) This Code section shall not apply with respect to the following:



(1) Persons seeking to enforce court orders that specifically authorize or direct the release of custody by the school; or

(2) State or local officials acting under the express authority of this state's child protection laws.

(c) Any person violating this Code section shall be guilty of a misdemeanor.

(d) School officials when acting in their official capacities in preventing or attempting to prevent a violation of this Code section shall be immune from civil or criminal liability that otherwise might be incurred or imposed. (Code 1981, § 20-2-780, enacted by Ga. L. 1990, p. 344, § 1.)

## ARTICLE 17

### TEACHERS AND OTHER SCHOOL PERSONNEL

**Cross references.** — Indemnification school teachers or employees, § 45-9-70 et seq. for death or permanent disability of public

#### PART 1

#### PROFESSIONAL PRACTICES COMMISSION

#### 20-2-790 through 20-2-800.

Reserved. Repealed by Ga. L. 1998, p. 750, § 1, effective July 1, 1998.

**Editor's notes.** — This part consisted of Code Sections 20-2-790 through 20-2-795, 20-2-795.1, and 20-2-796 through 20-2-800, relating to the Professional Practices Commission, and was based on Ga. L. 1967, p. 840, §§ 1-4, Ga. L. 1968, p. 330, § 1, Ga. L. 1972, p. 555, §§ 1, 2, Ga. L. 1980, p. 1214, §§ 1-11, Ga. L. 1982, p. 3, § 20, Ga. L. 1984, p. 1201, § 1, Ga. L. 1985, p. 1515, § 1, Ga. L. 1987, p. 3, § 20, Ga. L. 1990, p. 1867, § 1, Ga. L. 1991, p. 620, § 1, Ga. L. 1991, p. 1546, § 7, Ga. L. 1994, p. 801, § 2, Ga. L. 1995,

p. 1072, § 5, Ga. L. 1996, p. 6, § 20, Ga. L. 1997, p. 1390, §§ 2-5. For provisions concerning the Professional Standards Commission, see Code Sections 20-2-981 through 20-2-989.1.

Ga. L. 1998, p. 750, § 11, not codified by the General Assembly, provides that all cases pending before the Professional Practices Commission on June 30, 1998, shall be transferred to the Professional Standards Commission, created pursuant to Code Section 20-2-983.

#### PART 2

#### TEACHERS' LOCAL LICENSES

#### RESEARCH REFERENCES

**Am. Jur. Proof of Facts.** — Proof that a Teacher's License was Improperly Re- voked: Teacher's Damages and Emotional Stress Award, 66 POF3d 541.

**20-2-810. School systems exempt from part.**

Reserved. Repealed by Ga. L. 1983, p. 3, § 53, effective July 1, 1983.

**Editor's notes.** — This Code section was based on Ga. L. 1919, p. 288, § 162; Code 1933, § 32-107.

**20-2-811. Forging, altering, or counterfeiting teacher's local certificate or license.**

Whoever, with intent to defraud the state or any county, town, or city or any person, shall falsely and fraudulently make, forge, alter, or counterfeit or cause or procure to be falsely and fraudulently made, forged, altered, or counterfeited or shall willingly aid or assist in falsely and fraudulently making, forging, altering, or counterfeiting any certificate or license issued by any county school superintendent or the executive officer of any local school board to a teacher shall be guilty of a felony and shall be punished as prescribed by Code Sections 16-9-1 and 16-9-2. (Ga. L. 1919, p. 288, § 165; Code 1933, § 32-9905.)

**RESEARCH REFERENCES**

**C.J.S.** — 53 C.J.S., Licenses, § 125 et seq.

**PART 3****PAYMENT OF SALARIES****RESEARCH REFERENCES**

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 183 et seq.

**20-2-830. Power to issue warrants in anticipation of revenue.**

For the purpose of anticipating collection of the taxes of any year, the Governor is authorized to draw his warrant at the end of each and every month during any year, in the favor of the State School Superintendent or of the several county school superintendents and treasurers of local school systems, in the discretion of the State Board of Education, for such amount or amounts as are then due to the teachers. Such warrants shall be drawn on the funds appropriated by the legislature for any year and shall not exceed in the aggregate amount the appropriation for the public schools so made for that year. The honor of the state is pledged to the payment thereof. (Ga. L. 1919, p. 288, § 103; Code 1933, § 32-929.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 26, 106. **C.J.S.** — 81A C.J.S., States, §§ 243, 244.

**Am. Jur. Proof of Facts.** — 22 Am. Jur. Proof of Facts, Schools, § 40.

**20-2-831. Sale of warrants at discount.**

It shall be lawful to sell at a discount warrants drawn under Code Section 20-2-830 to any person, bank, or banking institution, the sale to be made at the lowest possible rate of discount. (Ga. L. 1919, p. 288, § 104; Code 1933, § 32-930.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 207, 224.

**20-2-832. Governor's power to use allocated funds to pay teachers; borrowing to replace funds.**

The Governor is authorized to use any funds in the treasury, which may have been allocated for any special fund or purpose, for the payment of public school teachers to avoid increasing the public debt of the state. Such funds shall be used without payment of interest thereon and it shall be the duty of the Governor, when any fund shall be so used, to replace the fund or funds by borrowing the amount used, if necessary, at such time as will not interfere with the expenditure for the purpose appropriated of any special or allocated funds or funds so drawn upon by the Governor by virtue of the authority granted in this Code section. (Ga. L. 1927, p. 167, § 2; Code 1933, § 32-1302; Ga. L. 1987, p. 3, § 20; Ga. L. 2001, p. 4, § 20.)

**Cross references.** — Provision that money collected from taxes, fees, and assessments for state purposes shall be paid into general fund, Ga. Const. 1983, Art. VII, Sec. III, Para. II.

**Editor's notes.** — Ga. L. 1943, p. 344, § 3, not codified by the General Assembly, provides that that Act shall not be regarded as repealing this Code section.

## OPINIONS OF THE ATTORNEY GENERAL

**Section was made ineffective** by the adoption of Ga. Const. 1945, Art. VII, Sec. II, Para. III (see Ga. Const. 1983, Art. VII, Sec. III, Para. II), which abolished special

or allocated funds and required that all funds of the state be paid into the general fund. 1948-49 Op. Att'y Gen. p. 642.



**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 82.

**20-2-833. Additional payments to supervisors of student teachers.**

(a) As used in this Code section, the term:

(1) “Student teaching” means the full-time component of a teacher education program in which a student preparing for the education profession is jointly assigned by a teacher education institution and a school system, state operated school, or school operated by the United States Department of Defense on a military reservation for classroom experience and which is designated in a teacher education program approved by the Professional Standards Commission as student teaching or internship.

(2) “Supervising teacher” means a public school teacher who is employed by a local board of education, state operated school, or school operated by the United States Department of Defense on a military reservation and who is designated to provide professional supervisory services in the supervision of a specific student teacher.

(3) “Supervising teacher services certificate” or “teacher support specialist certificate” means a supplementary certificate available from the Professional Standards Commission to persons who have completed a supervising teacher or teacher support specialist program approved by the commission.

(b) The Professional Standards Commission shall establish minimum requirements to be met by each supervising teacher or teacher support specialist.

(c) The Department of Education shall make payments to supervising teachers or teacher support specialists for each quarter or semester in which services are provided by such personnel as determined by the Professional Standards Commission and in the following amounts:

(1) A teacher who meets the minimum requirements established pursuant to subsection (b) of this Code section and holds a valid supervising teacher or teacher support specialist certificate shall receive \$750.00 for each such quarter or semester; and

(2) A teacher who meets the minimum requirements established pursuant to subsection (b) of this Code section but does not hold a valid supervising teacher or teacher support specialist certificate shall receive \$50.00 for each such quarter or semester.

(d) Payments made under this Code section shall be in addition to and not in lieu of any compensation otherwise payable to supervising

teachers or teacher support specialists. Such payments shall be made from funds appropriated or otherwise available to the Department of Education. In the event that in any fiscal year sufficient funds are not appropriated or available to make the full amount of all payments provided for in this Code section, the payment to each supervising teacher or teacher support specialist shall be reduced pro rata. (Code 1981, § 20-2-833, enacted by Ga. L. 1984, p. 727, § 1; Ga. L. 1987, p. 3, § 20; Ga. L. 1990, p. 1354, § 5; Ga. L. 1991, p. 1546, § 8; Ga. L. 2001, p. 4, § 20.)

#### PART 4

#### SICK, PERSONAL, AND MATERNITY LEAVE

**Law reviews.** — For article, "Education Law," see 53 Mercer L. Rev. 281 (2001).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 183 et seq.      tion while school is closed, 17 ALR 1224; 21 ALR 741.

**ALR.** — Right of teacher to compensa-

#### **20-2-850. Sick leave for teachers and other personnel; accumulation of sick and personal leave; regaining forfeited leave; local policies; cost of employing substitute.**

(a)(1) Each person employed in any public school system of this state in the capacity of teacher, student services support personnel, or administrative and supervisory personnel, hereinafter referred to in this part as "personnel," as classified by the Professional Standards Commission pursuant to subsection (a) of Code Section 20-2-200, except county or regional librarians, shall be entitled to sick leave with full pay computed on the basis of one and one-fourth working days for each completed contract month, and all unused sick leave shall be accumulated from one contract year to the next up to a maximum of 45 days, except for additional days which may be accumulated for the purposes provided for in Code Section 20-2-853. Personnel may utilize sick leave upon the approval of the local school superintendent or an appointed designee for absence due to illness or injury or necessitated by exposure to contagious disease or to illness or death in the immediate family. Personnel shall be charged with sick leave for absence only on days upon which they would otherwise work, and no charge against sick leave shall be made for absence on Sundays, holidays, or other nonworkdays.

(2) A teacher or other person subject to this subsection shall not be charged with sick leave for absence due to an injury to such teacher

or other person caused by a physical assault while such teacher or other person was engaged in the performance of his or her duties; provided, however, that this paragraph shall apply only to the first seven workdays of absence resulting from a single injury. A teacher or other person who is absent for up to seven days due to such an injury also shall not have his or her compensation reduced because of such absence or be required to pay the cost of a substitute.

(b)(1) Any unused sick and personal leave accumulated by personnel pursuant to subsection (a) of this Code section shall be credited to such personnel and shall be transferred when there is a change in the employment of such personnel from one local board of education to another or from a local board of education to an unclassified position in the Department of Education, but no local board of education shall be required to transfer funds to another, nor shall the State Board of Education provide funds to a local unit of administration beyond those authorized by subsection (g) of Code Section 20-2-182 to finance the potential or actual cost incurred by a local unit of administration through the employment of personnel transferring accumulated unused sick and personal leave. Any accumulated unused sick and personal leave credited to personnel shall be forfeited if such personnel withdraw from service for a period of 12 or more consecutive months, unless the withdrawal from service is for educational leave to seek a higher level or different field of certification and provided that the withdrawal from service for this purpose is for no longer than 24 consecutive months. Any personnel who forfeit such accumulated sick and personal leave as required under this subsection shall be entitled to regain such accumulated sick and personal leave after such personnel have returned to service for a period of two consecutive years.

(2) Any unused sick and personal leave accumulated by personnel employed by the Department of Education shall be credited to such personnel and shall be transferred when there is a change in the employment of such personnel from the Department of Education to a local board of education, but the State Board of Education shall not be required to provide funds to a local unit of administration beyond those authorized by subsection (g) of Code Section 20-2-182 to finance the potential or actual cost incurred by a local unit of administration through the employment of personnel transferring accumulated unused sick and personal leave as authorized in this paragraph. Any accumulated unused sick and personal leave credited to such personnel shall be forfeited if such personnel withdraw from service for a period of 12 or more consecutive months, unless the withdrawal from service is for educational leave to seek a higher level or different field of certification and provided that the withdrawal from service for this purpose is for no longer than 24 consecutive months. Any personnel



who forfeit such accumulated sick and personal leave as required under this subsection shall be entitled to regain such accumulated sick and personal leave after such personnel have returned to service for a period of two consecutive years.

(c)(1) The sick leave and the accumulation of unused sick leave and the payments for unused sick leave provided for by this part shall be subject to subsection (g) of Code Section 20-2-182, but this part shall not be construed so as to prohibit local boards of education from adopting policies relative to sick leave and the accumulation of unused sick leave and payments for unused sick leave which are supplemental to this part, provided the cost of implementing and maintaining any such supplemental policies shall be paid entirely from local funds.

(2) A local board of education may establish and set policies and procedures for a sick leave bank or pool of voluntarily contributed employee sick leave days. Participating employees shall make equal contributions to the bank or pool. Such employees may draw sick leave days from the bank or pool as provided by adopted local board of education policy. Any other provisions of this part or any other laws to the contrary notwithstanding, state allotted sick leave days funded pursuant to the provisions of subsection (g) of Code Section 20-2-182 may be contributed to or withdrawn from a local board of education sick leave bank or pool subject to the following requirements:

(A) Each employee may contribute only up to a maximum of 45 state funded sick leave days to the bank or pool, but each employee may contribute as many locally funded sick leave days as provided for by local board of education policy; and

(B) Each employee shall be entitled to withdraw from the bank or pool as many state and locally funded sick leave days as provided for by local board of education policy.

(3) Local boards of education shall maintain for each employee an accurate, complete, and up-to-date record of all state and locally funded sick leave days contributed to and withdrawn from the sick leave bank or pool, and such record shall show a separate accounting for state funded and locally funded sick leave days.

(4) A local board of education that establishes a sick leave bank pursuant to paragraph (2) of this subsection shall allow an employee of the local board to donate up to ten sick leave days to his or her spouse if such spouse is also an employee of the local board for purposes of maternity leave, illness, illness of a family member, or death of a family member.

(d) No personnel utilizing sick leave under this part shall be required to pay the cost of employing a substitute to serve in their absence on

such sick leave. (Ga. L. 1953, Nov.-Dec. Sess., p. 43, §§ 1, 2; Ga. L. 1974, p. 477, § 1; Ga. L. 1977, p. 972, § 1; Ga. L. 1978, p. 990, § 1; Ga. L. 1980, p. 465, §§ 1, 2; Ga. L. 1986, p. 782, § 1; Ga. L. 1986, p. 1263, § 1; Ga. L. 1988, p. 1496, § 2; Ga. L. 1989, p. 56, § 1; Ga. L. 1989, p. 61, § 1; Ga. L. 1991, p. 1038, § 1; Ga. L. 1991, p. 1531, § 6; Ga. L. 1991, p. 1546, § 9; Ga. L. 1992, p. 6, § 20; Ga. L. 1997, p. 545, § 1; Ga. L. 2001, p. 298, § 1; Ga. L. 2003, p. 406, § 1; Ga. L. 2006, p. 543, § 1/HB 543.)

**Cross references.** — Sick leave for employees of state postsecondary technical schools, § 20-4-31.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1991, a misspelling of “nonworkdays” was corrected

at the end of paragraph (1) of subsection (a).

**Law reviews.** — For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 74 (2001).

## OPINIONS OF THE ATTORNEY GENERAL

**Local boards of education may not reduce or restrict teacher sick leave benefits** provided by valid laws and by valid policies of the State Board of Education. 1974 Op. Att’y Gen. No. 74-13.

**Local boards of education have authority to pay their employees on account of sickness.** 1981 Op. Att’y Gen. No. 81-14.

**Rate of pay while sick is same as if present.** — O.C.G.A. §§ 20-2-850 and 20-2-1110 allow local boards to pay employees on account of sickness at the same rate as the employees are paid if present for work. 1981 Op. Att’y Gen. No. 81-14.

**Local boards of education may advance unearned sick leave.** — Local board of education may establish by contract or by board action a policy of advancing to the board’s teachers at the beginning of each school year days of sick leave not yet earned by the performance of teaching services, provided that the teacher has earned but has not received summer pay sufficient to cover the days of unearned sick leave being advanced. 1974 Op. Att’y Gen. No. 74-13.

**Payments for unused sick leave.** —

State law entitlement to payments for unused sick leave is limited to teachers and does not include administrative and other personnel in view of the reference in O.C.G.A. § 20-2-850(c) to O.C.G.A. § 20-2-182(f) (now a reference to § 20-2-182(g)), which applies only to “teachers.” 1989 Op. Att’y Gen. No. 89-21.

Neither the State Board of Education nor the local boards of education are obligated to make payments to teachers for unused sick leave if the General Assembly fails to appropriate adequate funds to make such payments. 1989 Op. Att’y Gen. No. 89-21.

Local boards of education are not prohibited from adopting policies providing for payments for unused sick leave, so long as the cost of implementing and maintaining such policies is paid entirely from local, as opposed to state, funds. 1989 Op. Att’y Gen. No. 89-21.

**Effect of amendment.** — As amended, provisions on accumulation and transfer of sick and personal leave continue to apply to all teachers of the public schools of this state. 1978 Op. Att’y Gen. No. 78-43.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 188.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 460.

**ALR.** — Who is an eligible employee under § 101(2) of the Family and Medical Leave Act (29 U.S.C.A. § 2611(2)), 166 ALR Fed. 569.

**20-2-851. Use of accumulated sick leave for personal or professional reasons.**

During any school year, personnel may utilize up to a maximum of three days of any accumulated sick leave for the purpose of absenting themselves from their duties for personal or professional reasons if prior approval of their absence is given by the local school superintendent or his authorized representative; provided, however, that the absence is not in conflict with a local board of education policy concerning school days on which the presence of the personnel requesting absence is essential for effective school operation. No grant of approval for an absence permitted under this Code section shall be conditioned upon disclosure of the specific purpose for which such absence is sought, nor shall any such grant of approval be withheld or denied because of the failure or refusal of personnel to disclose the specific purpose for which such an absence is sought; provided, however, that personnel may be requested to state whether the absence is sought under the category of "personal" or "professional" absence. (Ga. L. 1970, p. 459, § 1; Ga. L. 1977, p. 798, § 1; Ga. L. 1980, p. 465, § 2.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 188.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 460.

**ALR.** — Dismissal of public school teacher because of unauthorized absence or tardiness, 78 ALR3d 117.

**20-2-852. Maternity leave.**

A leave of absence for maternity reasons shall be granted to a female employed by a public school system in a capacity specified by subsection (a) of Code Section 20-2-850 as follows:

(1) Any such employee who is pregnant shall be entitled to a leave of absence to begin at a time to be determined by the employee, the physician, and the local school superintendent between the commencement of pregnancy and the anticipated date of delivery. The employee shall notify the superintendent in writing of her desire to take such leave and, except in case of emergency, shall give such notice at least 60 calendar days prior to the date on which her leave is to begin. This notice shall include a doctor's statement of anticipated date of physical disability. The employee may continue in active employment as late into her pregnancy as she desires provided she is able to perform properly the required functions of her job. Final determination of ability to perform properly the required job functions shall be made by the local board of education. An employee wishing to work to the date of physical disability shall be entitled to the use of all accumulated sick leave credited to her, not to exceed the



doctor's estimated length of physical disability. An employee wishing to discontinue work prior to the date of physical disability shall be governed by the same sick leave provisions as apply to employees on leave for other reasons;

(2) An employee who has been granted leave for the period of physical disability only shall be entitled to return to active employment upon presentation of a doctor's statement of physical ability to perform the required functions of the job and shall be assigned to a substantially equivalent position to be approved by the superintendent. An employee who has been granted leave for a period longer than the period of physical disability, but not to exceed one full school year, shall be entitled to return to active employment upon written request for reassignment and contingent on a vacancy for which the employee is qualified. Such employee shall be given preference equal to any other applicant returning from a period of physical disability for a vacancy for which she is qualified. In any instance, the employee's return to active employment may be delayed until the beginning of a quarter, or semester, in order to maintain continuity of classroom instruction; and

(3) If the local school board disagrees with any doctor's statement of disability or ability, it may appoint a physician of the same medical specialty as the employee's physician for the purpose of receiving independent medical judgment. (Ga. L. 1976, p. 364, § 1; Ga. L. 1980, p. 465, § 2.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools,  
§ 188.

**C.J.S.** — 78 C.J.S., Schools and School  
Districts, §§ 331, 374, 376 et seq., 460.

#### **20-2-853. Accumulation of and payment for additional days of unused sick leave.**

(a) Personnel who have accumulated 45 days of unused sick leave may accumulate additional days of unused sick leave during each school year for the purpose of receiving the payments provided for in subsection (b) of this Code section.

(b) Beginning with the 1988-89 school year and continuing each school year thereafter, personnel who have accumulated 45 days of unused sick leave and who then accumulate additional days of unused sick leave during a school year as authorized by Code Section 20-2-850 and who:

(1) Have used no sick leave in that school year shall receive the state contribution for all those additional days of unused sick leave; or

(2) Have used only one day of those additional days of sick leave in that school year shall receive \$50.00 for all those additional days of unused sick leave.

The payment for such additional unused sick leave which is accumulated during a school year shall be paid to such personnel at the end of that school year. (Code 1981, § 20-2-853, enacted by Ga. L. 1988, p. 1496, § 3; Ga. L. 1989, p. 14, § 20; Ga. L. 1990, p. 8, § 20.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1989, “subsection (b)” was substituted for “subsection (c)” in subsection (a).

### OPINIONS OF THE ATTORNEY GENERAL

**Entitlement limited to teachers.** — State law entitlement to payments for unused sick leave is limited to teachers and does not include administrative and other personnel in view of the reference in O.C.G.A. § 20-2-850(c) to O.C.G.A. § 20-2-182(f) (now a reference to § 20-2-182(g)), which applies only to “teachers.” 1989 Op. Att’y Gen. No. 89-21.

**Payments dependent upon appropriations.** — Neither the State Board of Education nor the local boards of education are obligated to make payments to

teachers for unused sick leave if the General Assembly fails to appropriate adequate funds to make such payments. 1989 Op. Att’y Gen. No. 89-21.

**Adoption of policies by local boards.** — Local boards of education are not prohibited from adopting policies providing for payments for unused sick leave, so long as the cost of implementing and maintaining such policies is paid entirely from local, as opposed to state, funds. 1989 Op. Att’y Gen. No. 89-21.

### PART 5

#### JURY LEAVE FOR TEACHERS

**Cross references.** — Discrimination against employee for attending a judicial proceeding in response to a court order or process, § 34-1-3.

**20-2-870. Right to leave for jury duty or when subpoenaed to testify in case arising from duties as teacher; teacher not to pay substitute; retention of juror’s compensation.**

Each person employed as a teacher in any public school of this state shall be allowed a leave of absence without loss of pay and without deduction of any amounts otherwise received as compensation for service as a teacher, for the purpose of attending any court as a juror or when subpoenaed to testify in a case arising out of the person’s duties as a teacher, such as the reporting of child abuse required by Code Section 19-7-5. Any teacher who serves as a juror or witness as provided in this Code section shall not have the jury or witness leave deducted from sick, personal, or professional leave. No teacher utilizing jury or witness leave under this Code section shall be required to pay the cost of employing a substitute teacher to serve in his absence on such jury or

witness leave, and local boards of education may adopt policies regarding the retention by teachers of the compensation for serving on a jury. (Ga. L. 1977, p. 800, § 1; Ga. L. 1986, p. 498, § 1.)

**Cross references.** — Jury service generally, T. 15, C. 12.

## RESEARCH REFERENCES

**C.J.S.** — 50A C.J.S., Juries, § 351.

### PART 6

## HEALTH INSURANCE PLANS

### Subpart 1

#### School Personnel Post-employment Health Benefit Fund

**Editor's notes.** — Due to the passage of Ga. L. 2009, p. 49, former Subpart 1, consisting of Code Sections 20-2-880 through 20-2-898 was redesignated as present Subpart 2. Former Subpart 2, consisting of Code Sections 20-2-910 through 20-2-926, was redesignated as Subpart 3.

### 20-2-874. Definitions.

As used in this subpart, the term:

(1) "Actuarial accrued liability" means that portion, as determined by a particular actuarial cost method, of the actuarial present value of fund obligations and administrative expenses which is not provided for by future normal costs.

(2) "Actuarial assumptions" means assumptions regarding the occurrence of future events affecting costs of the fund such as mortality, withdrawal, disability, and retirement; changes in compensation and offered post-employment benefits; rates of investment earnings and asset appreciation or depreciation; procedures used to determine the actuarial value of assets; and other such relevant items.

(3) "Actuarial cost method" means a method for determining the actuarial present value of the obligations and administrative expenses of the fund and for developing an actuarially equivalent allocation of such value to time periods, usually in the form of a normal cost and an actuarial accrued liability. Acceptable actuarial methods are the aggregate, attained age, entry age, frozen attained age, frozen entry age, and projected unit credit methods.

(4) "Actuarial valuation" means the determination, as of a valuation date, of the normal cost, actuarial accrued liability, actuarial value of assets, and related actuarial present values for the fund.



(5) "Actuarially sound" means that calculated contributions to the fund are sufficient to pay the full actuarial cost of the fund. The full actuarial cost includes both the normal cost of providing for fund obligations as they accrue in the future and the cost of amortizing the unfunded actuarial accrued liability over a period of no more than 30 years.

(6) "Administrative expenses" means all expenses incurred in the operation of the fund, including all investment expenses.

(7) "Annual required contribution" means the amount determined in accordance with requirements of Governmental Accounting Standards Board Statement No. 43 or any subsequent Governmental Accounting Standards Board statements that may be applicable to the fund.

(8) "Board" means the Board of Community Health.

(9) "Commissioner" means the commissioner of community health.

(10) "Covered health care expenses" means all actual health care expenses incurred by the health plans on behalf of fund beneficiaries. Actual health care expenses include claims incurred by fund beneficiaries and providers and premiums incurred by intermediary entities and health care providers by the health plans.

(11) "Department" means the Department of Community Health.

(12) "Eligible to participate" means employees of employers who are participating in one of the health plans and those employees of employers who qualify to participate in the health plan but choose not to do so.

(13) "Employer" means the entity with which the fund beneficiary had the direct, in the case of employees, or indirect, in the case of dependents, employment relationship that gave rise to the fund beneficiary's eligibility for post-employment health benefits under the health plan.

(14) "Fund" means the Georgia School Personnel Post-employment Health Benefit Fund established under this subpart.

(15) "Fund beneficiaries" means all persons receiving post-employment health care benefits through the health plans.

(16) "Health plans" means the health insurance plan for public school teachers established under Subpart 2 of this part and the health insurance plan for public school employees established under Subpart 3 of this part.

(17) "Normal cost" means that portion of the actuarial present value of the fund obligations and expenses which is allocated to a valuation year by the actuarial cost method used for the fund.

(18) “Obligations” means the administrative expenses of the fund and the cost of covered health care expenses incurred on behalf of fund beneficiaries less any amounts received by or on behalf of fund beneficiaries.

(19) “State plan for other post-employment benefits” means the State of Georgia fiscal funding plan for retiree post-employment health care benefits as it relates to Governmental Accounting Standards Board Statement No. 43 or any subsequent Governmental Accounting Standards Board statements that may be applicable to the fund.

(20) “Unfunded actuarial accrued liability” means for any actuarial valuation the excess of the actuarial accrued liability over the actuarial value of the assets of the fund under an actuarial cost method utilized by the fund for funding purposes. (Code 1981, § 20-2-874, enacted by Ga. L. 2009, p. 49, § 1/SB 122.)

#### **20-2-875. Creation of fund; transfer of funds; use of funds.**

(a) There is created the Georgia School Personnel Post-employment Health Benefit Fund to provide for the costs of post-employment health insurance benefits. The fund shall be a trust fund of public funds; the board in its official capacity shall be the fund’s trustee; and the commissioner in his or her official capacity shall be its administrator.

(b) On August 31, 2009, the board shall identify the funds held in the Georgia Retiree Health Benefit Fund created by Article 6 of Chapter 18 of Title 45 for the payment of postretirement health benefits for public school teachers and public school employees and shall on that date transfer such funds to the fund created by subsection (a) of this Code section.

(c) The fund shall be available and dedicated without fiscal year limitations for covered health care expenses and administration costs. All employer and fund beneficiary contributions, appropriations, earnings, and reserves for the payment of obligations under this subpart shall be irrevocably credited to the fund. The amounts remaining in the fund, if any, after such health care expenses and administration costs have been paid shall be retained in the fund as a special reserve for covered health care expenses and administration costs. The board shall determine the time and amounts of distributions from the special reserve for covered health care expenses and administration costs. All assets of the fund shall be used solely for the payment of fund obligations and for no other purpose and shall be protected from creditors of the state and the employers. (Code 1981, § 20-2-875, enacted by Ga. L. 2009, p. 49, § 1/SB 122.)

**20-2-876. Responsibilities and procedures for operation of fund.**

(a) Responsibility for the proper operation of the fund is vested in the department.

(b) The board shall adopt actuarial assumptions as it deems necessary and prudent.

(c) The board may adopt any rules and regulations that it finds necessary to properly administer the fund.

(d) The board shall adopt rules and regulations to account for employer contributions and other assets separately.

(e) The commissioner, as executive officer of the board, shall employ such personnel as may be needed to carry out the provisions of this subpart and such personnel shall be employees of the department. The pro rata share of the costs of operating the department in the manner prescribed by law shall be a part of the administrative costs of the fund.

(f) The department may employ or contract for the services of actuaries and other professionals as required to carry out the duties established by this subpart.

(g) The department shall contract with the Division of Investment Services of the Teachers Retirement System of Georgia for any necessary services with respect to fund investments.

(h) The department shall maintain all necessary records regarding the fund in accordance with generally accepted accounting principles, as applicable to the fund.

(i) The department shall collect all moneys due to the fund and shall pay any administrative expenses necessary and appropriate for the operation of the fund from the fund.

(j) The department shall prepare an annual report of fund activities for the board, the House Committee on Appropriations, and the Senate Appropriations Committee. Such reports shall include, but not be limited to, audited financial statements. The reports shall contain the most recent information reasonably available to the department reflecting the obligations of the fund, earnings on investments, and such other information as the board deems necessary and appropriate. This report is due September 30 and shall reflect activity on a state fiscal year basis.

(k) Notwithstanding any other provision of law to the contrary, the department shall be entitled to any information that it deems necessary and appropriate from a retirement system in order that the provisions of Code Section 20-2-877 may be carried out. (Code 1981, § 20-2-876, enacted by Ga. L. 2009, p. 49, § 1/SB 122.)



**20-2-877. Technical advice from actuary; valuations.**

(a) The actuary employed or retained by the department shall provide technical advice to the department and to the board regarding the operation of the fund.

(b) Utilizing the actuarial assumptions most recently adopted by the board, the actuary shall set annual actuarial valuations of normal cost, actuarial liability, actuarial value of assets, and related actuarial present values for the state plan for other post-employment benefits. (Code 1981, § 20-2-877, enacted by Ga. L. 2009, p. 49, § 1/SB 122.)

**20-2-878. Commissioner authority; investment powers; prohibition of personal interest.**

(a) Subject to the supervision of the board, the commissioner shall have control over the fund established by this subpart. The obligations provided for in this subpart and all administrative expenses shall be paid from the fund. The department may expend moneys from the fund for any purpose authorized by this subpart.

(b) Subject to the supervision of the board, the commissioner shall have full power to invest and reinvest its assets, subject to all of the terms, conditions, limitations, and restrictions imposed by Article 7 of Chapter 20 of Title 47, the 'Public Retirement Systems Investment Authority Law' for large retirement systems. Subject to such terms, conditions, limitations, and restrictions, the commissioner shall have full power to hold, purchase, sell, assign, transfer, and dispose of any securities and investments in which any of the moneys are invested, including the proceeds of any investments and other moneys belonging to the fund. The records maintained by the fund shall have the same exemption from public inspection as that provided in Code Section 47-1-14.

(c) Except as otherwise provided in this subpart, no member of the board or employee of the department shall have any personal interest in the gains or profits from any investment made by the board or use the assets of the fund in any manner, directly or indirectly, except to make such payments as may be authorized by the board or by the commissioner as the executive officer of the board in accordance with this subpart. (Code 1981, § 20-2-878, enacted by Ga. L. 2009, p. 49, § 1/SB 122.)

**20-2-879. Minimum annual required contributions; employer obligations.**

(a) The board shall annually determine the minimum annual required contributions sufficient to maintain the fund in an actuarially

sound manner in accordance with Governmental Accounting Standards Board Statement No. 43 or any subsequent Governmental Accounting Standards Board statements that may be applicable to the fund.

(b) The board may annually establish required employer contributions to the fund which are supplemental to required employer contributions to the health plans as set forth in Subparts 2 and 3 of this part.

(c) It shall be the responsibility of employers to make contributions to the fund in accordance with the employer contribution rates established by the board. (Code 1981, § 20-2-879, enacted by Ga. L. 2009, p. 49, § 1/SB 122.)

## Subpart 2

### Plan for Public School Teachers

**Cross references.** — Group self-insurance programs for workers' compensation, § 34-9-150 et seq. Indemnification for death or permanent disability of public school teachers and employees, § 45-9-70 et seq.

**Editor's notes.** — Due to the passage of Ga. L. 2009, p. 49, former Subpart 1, consisting of Code Sections 20-2-880 through 20-2-898 was redesignated as

present Subpart 2. Former Subpart 2, consisting of Code Sections 20-2-910 through 20-2-926, was redesignated as Subpart 3.

**Administrative rules and regulations.** — State health benefit plan, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Chapter 111-4-1.

## OPINIONS OF THE ATTORNEY GENERAL

### State Personnel Board has authority to determine benefits under plan.

— State Personnel Board has exclusive authority to determine which benefits, including which health maintenance organizations, are included in the health insurance plan for public schoolteachers. 1981 Op. Att'y Gen. No. 81-106.

### Local boards may accept or reject plan, but not portions of the plan.

— Local boards of education have authority to either reject or participate in a health insurance plan, but lack authority to selectively reject portions of the plan, including various health maintenance organizations options. 1981 Op. Att'y Gen. No. 81-106.

### State Personnel Board may assess the State Department of Education

for contributions not to exceed 3 percent of the board's total outlay for personal services of public schoolteachers; however, no other assessment can be made against any governmental agency for an employer's contribution under this insurance plan. 1976 Op. Att'y Gen. No. 76-34.

### Providing "cafeteria" plan of fringe benefits.

— Local boards of education may provide teachers and employees the "cafeteria" plan of fringe benefits allowed in § 125 of the Internal Revenue Code as an optional program, paid for by local supplement rather than the state's portion of salaries allocated under O.C.G.A. § 20-2-220. 1984 Op. Att'y Gen. No. U84-6.

## 20-2-880. Definitions.

As used in this subpart, the term or terms:



(1) “Board” means the Board of Community Health established under Chapter 2 of Title 31.

(2) “Commissioner” means the commissioner of community health established under Chapter 2 of Title 31.

(3) “Local employer” means the county or independent board of education, a charter school, regional and county libraries, and the governing authority of Georgia Military College.

(4) “Public school teacher,” “teacher,” and “employee” mean any person employed not less than half time in a professionally certificated capacity or position in the public school systems of this state. “Public school teacher,” “teacher,” and “employee” also mean librarians and other personnel employed by regional and county libraries or the high school program of Georgia Military College. “Public school teacher,” “teacher,” and “employee” also mean any professionally certificated person who has acquired ten years or more of creditable service and who is being paid retirement benefits by the Teachers Retirement System of Georgia, Chapter 3 of Title 47, or by any other public school teacher retirement system in this state. “Public school teacher,” “teacher,” and “employee” also mean any person employed not less than half time and compensated in a professionally certificated capacity or position in a charter school in this state established pursuant to Article 31 of Chapter 2 of Title 20 if such charter school elects upon initial approval of its charter or, if such charter school is an existing charter school, elects upon notice by the health insurance plan provided in this part or upon the expiration of its current health care plan or by no later than December 31, 2009, to participate in the health insurance plan established pursuant to this subpart. “Public school teacher,” “teacher,” and “employee” shall not be deemed to include any emergency or temporary employee. Notwithstanding this definition or any other provision of this subpart, the board may, by regulation, make available to employees who work 17 1/2 hours or more per week such benefits as are required to be made available to such employees by regulations of the United States Internal Revenue Service or any other federal authority.

(5) “Qualified entity” means any person, association, corporation, or other legal entity with which the board is authorized under Article 1 of Chapter 18 of Title 45, relating to state employees’ health insurance, to enter into contract. (Ga. L. 1975, p. 37, § 1; Ga. L. 1977, p. 991, § 1; Ga. L. 1978, p. 2268, §§ 1, 2; Ga. L. 1979, p. 1290, § 1; Ga. L. 1986, p. 291, § 1; Ga. L. 1987, p. 3, § 20; Ga. L. 1989, p. 1143, § 1; Ga. L. 1992, p. 6, § 20; Ga. L. 1999, p. 296, § 26; Ga. L. 2001, p. 4, § 20; Ga. L. 2008, p. 612, § 1/HB 1277; Ga. L. 2009, p. 453, § 1-7/HB 228.)



## OPINIONS OF THE ATTORNEY GENERAL

**Health insurance plan for public school teachers** would cover any one defined as a "teacher" under the statute. 1976 Op. Att'y Gen. No. 76-34.

## JUDICIAL DECISIONS

Cited in Live Oak Consulting, Inc. v. Dep't of Cmty. Health, 281 Ga. App. 791, 637 S.E.2d 455 (2006).

**20-2-881. Board to establish plans; rules and regulations; extent of coverage; recommendations to General Assembly for schedule of maximum fees for hospitals and practitioners.**

(a) The board is authorized to establish a health insurance plan for public school teachers of this state and to adopt and promulgate rules and regulations for its administration, subject to the limitations contained in this subpart, which plan may provide for group hospitalization, surgical, and medical insurance against the financial costs of hospitalization, surgery, and medical treatment and care and may also include, among other things, prescribed drugs, medicines, prosthetic appliances, hospital inpatient and outpatient service benefits, dental benefits, vision care benefits, and medical expense indemnity benefits, including major medical benefits.

(b) The board shall investigate fees of hospitals, pharmacists, and practitioners of the healing arts and present recommendations to the General Assembly by not later than January 15, 1991, for a schedule of maximum fees for hospitals and practitioners of the healing arts. The recommended fees for hospitals shall be determined based upon a statistical analysis of the peer groups adjusted for the intensity of the case mix for hospitals of same licensure classification or subclassification (e.g., general, pediatric, psychiatric, rehabilitation, etc.) and of similar services in the same geographic area. The recommended fee schedule shall not be at the average of the usual and customary charges if the board determines that the average represents an unreasonably high or low charge.

(c) The recommended fees for practitioners of the healing arts and pharmacists shall be determined based upon a statistical analysis of the peer groups for such practitioners and pharmacists of the same licensure classification (e.g., internists, family practitioners, cardiologists, neurosurgeons, etc.) and of similar services in the same geographic area. The recommended fee schedule shall not be at the average of the usual and customary charges if the board determines that the average represents an unreasonably high or low charge.

(d) The recommendations shall include an analysis of all hospitals, pharmacists, and practitioners accepting assignment of benefits for such services not to exceed the amount authorized by the fee schedule. The board shall publish in print or electronically a list of practitioners who accept assignment of benefits under the plan.

(e) The recommendations shall include an analysis of the impact of practitioners agreeing to provide medical or surgical services at a reduced rate for members of the health insurance plan and of pharmacists and hospitals agreeing to provide hospital services, medical equipment, or pharmaceuticals at a reduced rate for members of the health insurance plan. The board shall publish in print or electronically a list of practitioners of the healing arts, pharmacists, and hospitals that offer a reduced rate for members and the rate at which those services, equipment, or pharmaceuticals have been offered. (Ga. L. 1975, p. 37, § 2; Ga. L. 1980, p. 1541, § 1; Ga. L. 1987, p. 3, § 20; Ga. L. 1990, p. 1924, § 1; Ga. L. 1991, p. 94, § 20; Ga. L. 2001, p. 4, § 20; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2012, p. 775, § 20/HB 942.)

**The 2010 amendment**, effective June 3, 2010, inserted “in print or electronically” in the last sentence of subsections (d) and (e).

**The 2012 amendment**, effective May

1, 2012, part of an Act to revise, modernize, and correct the Code, substituted “practitioners who accept” for “practitioners that accept” in the second sentence of subsection (d).

OPINIONS OF THE ATTORNEY GENERAL

**State Personnel Board has authority to determine benefits under plan.** — State Personnel Board has exclusive authority to determine which benefits, including which health maintenance organizations, are included in the health insurance plan for public schoolteachers. 1981 Op. Att’y Gen. No. 81-106.

**Local boards may accept or reject**

**plan, but not portions of the plan.** — Local boards of education have authority to either reject or participate in a health insurance plan, but lack authority to selectively reject portions of the plan, including various health maintenance organizations options. 1981 Op. Att’y Gen. No. 81-106.

RESEARCH REFERENCES

**Am. Jur. 2d.** — 44 Am. Jur. 2d, Insurance, § 1842 et seq. 68 Am. Jur. 2d, Schools, §§ 134, 135.

**C.J.S.** — 81A C.J.S., States, § 120.

JUDICIAL DECISIONS

**Cited in** Live Oak Consulting, Inc. v. Dep’t of Cmty. Health, 281 Ga. App. 791, 637 S.E.2d 455 (2006).

**20-2-882. Exclusions from coverage.**

Such health insurance plan shall not include expenses incurred by, or on account of, an individual prior to the effective date of the plan as to him; services received for injury or sickness due to war or any act of war, whether declared or undeclared, which war or act of war shall have occurred after the effective date of this plan; expenses for which the individual is not required to make payment; expenses to the extent of benefits provided under any employer group plan other than this plan in the cost of which the state participates; and such other expenses as may be excluded by the regulations of the board. (Ga. L. 1975, p. 37, § 3.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 44 Am. Jur. 2d, Insurance, §§ 1853, 1855.

**20-2-883. Design of plan; controls on unnecessary use of services.**

The health insurance plan shall be designed by the board to:

(1) Provide a reasonable relationship between the hospital, surgical, and medical benefits to be included and the expected distribution of expenses of each such type to be incurred by the covered employees and dependents; and

(2) Include reasonable controls, which may include deductible and coinsurance provisions applicable to some or all of the benefits, to reduce unnecessary utilization of the various hospital, surgical, and medical services to be provided and to provide reasonable assurance of stability in future years of the plan. (Ga. L. 1975, p. 37, § 4.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 44 Am. Jur. 2d, Insurance, § 1847.

**20-2-884. Contracts for benefits or self-insurance authorized; reinsurance; certificates of coverage.**

(a) The board is authorized to execute a contract or contracts to provide the benefits determined upon under the health insurance plan in accordance with this subpart, or the board may, in its discretion, establish a self-insured plan in whole or in part. All of the benefits to be provided under the plan may be included in one or more similar contracts, or the benefits may be classified into different types with each type included in one or more contracts issued by the same or



different qualified entities or covered under a self-insured plan. A reasonable time before entering into any insurance contract under this subpart, the board shall invite proposals from such qualified entities as, in the opinion of the board, would desire to accept any part of the insurance coverage authorized by this subpart; provided, however, that the board may, in its discretion, establish a self-insured plan in whole or in part.

(b) The board may contract with any health maintenance organization qualified to conduct business in this state pursuant to Chapter 21 of Title 33, relating to health maintenance organizations, as it now exists or may hereafter be amended, which provides evidence that it is qualified to operate as a health maintenance organization in accordance with the rules and regulations issued by the secretary of the health and human services and the secretary of the Department of Education of the United States or may contract with any other corporation licensed under Title 33 which is authorized by law to provide the same types of benefits which are provided by such health maintenance organizations.

(c) The board may arrange with any qualified entity to reinsure portions of such contract with any other entity which elects to be a reinsurer and is legally competent to enter into a reinsurance agreement. The board may designate one or more of such entities as the administering entity or entities.

(d) Each employee who is covered under any such contract or contracts shall receive a certificate setting forth the benefits to which the employee and his dependents are entitled thereunder, to whom such benefits shall be payable, to whom claims should be submitted, and summarizing the provisions of the contract principally affecting the employee and his dependents. Such certificate shall be in lieu of the certificate which the entity or entities issuing such contract or contracts would otherwise issue.

(e) The entities eligible to participate as reinsurers and the amount of coverage under the contract or contracts to be allocated to each issuing entity or reinsurer may be redetermined by the board for and in advance of any contract year after the first year and with any modifications thereof it deems appropriate to carry out the intent of such subdivision, subject to such limitations as set forth in this subpart. The board may, at the end of any contract year, discontinue any contract or contracts it has executed with any entity or entities and replace it or them with a contract or contracts in any other entity or entities meeting the requirements of this subpart or may in its discretion establish a self-insured plan in whole or in part. (Ga. L. 1975, p. 37, § 5; Ga. L. 1977, p. 991, §§ 2, 5; Ga. L. 1980, p. 963, § 3.)

### OPINIONS OF THE ATTORNEY GENERAL

**State Health Benefit Plan is not subject to the State Insurance Code,** and neither the State Personnel Board nor the entity administering self-insured plans for the State Personnel Board would

be subject to any administrative fines or sanctions under the insurance code for administration of such plans. 1982 Op. Att'y Gen. No. 82-70.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 44 Am. Jur. 2d, Insurance, §§ 1851, 1852.

**C.J.S.** — 81A C.J.S., States, § 120.

### **20-2-885. Coverage for retiring school teachers and their dependents.**

(a) The contract or contracts shall provide for health insurance for retiring public school teachers and their spouses and dependent children, as defined by the regulations of the board, under such terms as the board may deem appropriate. The board shall adopt regulations prescribing the conditions under which a retiring public school teacher may elect to participate in or withdraw from the plan.

(b) The contract or contracts shall provide for health insurance for retired public school teachers who retired prior to January 1, 1979, and their spouses and dependent children, as defined by the regulations of the board, under such terms as the board may deem appropriate. The costs of employer contributions and the administration of providing such insurance may be assessed against such retired teachers or may be appropriated to the Department of Education. The board shall adopt regulations prescribing the conditions under which a retired employee may elect to participate in or withdraw from the plan.

(c) If a retiring or retired public school teacher or the beneficiary of such retiring or retired public school teacher exercises eligibility under board regulations to continue coverage under the plan and the retiring or retired public school teacher or the beneficiary is eligible to participate in the insurance program operated by or on behalf of the federal government under the provisions of 42 U.S.C.A. 1395, as amended, the coverage available under the public school teachers' health insurance plan shall be subordinated to the coverage available under such federal program. The board is authorized to promulgate regulations to establish the premium paid by the retiring or retired public school teacher or beneficiary to reflect the subordination of coverage. (Ga. L. 1975, p. 37, § 6; Ga. L. 1978, p. 1698, § 1; Ga. L. 1987, p. 3, § 20; Ga. L. 1989, p. 1143, § 2; Ga. L. 2001, p. 4, § 20.)

**RESEARCH REFERENCES**

**C.J.S.** — 81A C.J.S., States, § 120.

**20-2-886. Coverage for dependents — Right to coverage; agreement to pay contributions.**

Each employee shall be entitled to have his spouse and dependent children, as defined by the regulations of the board, included in the coverage, upon agreeing to pay his contributions to the cost of such coverage for such dependents. The board shall adopt regulations governing the discontinuance and resumption by employees of coverage for dependents. (Ga. L. 1975, p. 37, § 7.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 44 Am. Jur. 2d, Insurance, § 1853.

**C.J.S.** — 81A C.J.S., States, § 120.

**20-2-887. Coverage for dependents — Where both husband and wife are eligible to be insured.**

(a) In the situation where both husband and wife are eligible to be insured under this subpart as either a retired public school teacher, a retiring public school teacher, or an employee, each may enroll for dependent coverage so that the benefits provided by this program will be coordinated; provided, however, the sum of the total benefits provided by this program will not exceed the reasonable charges for covered services.

(b) The board shall by July 1, 1980, develop and contract for a plan of health insurance which provides for the coordination of benefits coverage specified in subsection (a) of this Code section. Those persons who elect to enroll in such plan and who are presently insured under this subpart shall have six months from the effective date of the plan to enroll without furnishing a satisfactory health statement, after which anyone electing such coordination of benefits coverage must furnish such health statement. (Ga. L. 1980, p. 963, § 1; Ga. L. 1987, p. 3, § 20; Ga. L. 2001, p. 4, § 20.)

**20-2-888. Coverage for certain surviving spouses and teachers not entitled to retirement benefits.**

Notwithstanding any other provisions of this subpart to the contrary, the board shall offer coverage to the surviving spouse of any teacher who died prior to January 1, 1979, and to any teacher with eight or more years of creditable service who is not presently eligible to receive retirement benefits. The surviving spouse or teacher shall pay in



monthly installments both the employer and employee premiums for such insurance coverage. The amount of the monthly premiums shall be equal to the rate of employer and employee contributions in effect during the existence of the coverage. (Ga. L. 1979, p. 1290, § 2; Ga. L. 1996, p. 306, § 1; Ga. L. 2001, p. 1094, § 1.)

**20-2-889. Coverage for personnel other than teachers.**

Any local employer may provide for the coverage of other personnel who are not included in paragraph (4) of Code Section 20-2-880 by a separate contract with the board. (Ga. L. 1977, p. 991, § 8; Ga. L. 1986, p. 10, § 20.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 44 Am. Jur. 2d, Insurance, § 1853.      **C.J.S.** — 81A C.J.S., States, § 120.

**20-2-890. Claims; payment of benefits; time for presentation of drafts.**

(a) Any benefits payable under the health insurance plan may be made either directly to the attending physicians, hospitals, medical groups, or others furnishing the services upon which a claim is based or to the covered employee upon presentation of valid bills for such services, subject to such provisions to facilitate payment as may be made by the board.

(b) Such claims must be presented in writing to the board or its designee within two years from the date the service was rendered, or else no benefits will be owed or paid.

(c) All drafts or checks issued by the board or its designee shall be void if not presented and accepted by the drawer's bank within six months of the date the draft or check was drawn. If the payee or member does not present the draft or check for acceptance during the seven years following the date the draft or check was issued, the draft or check will be void, funds will be retained in the insurance fund, and further payments for such claim will not be owed or paid. (Ga. L. 1975, p. 37, § 8; Ga. L. 1979, p. 672, § 1; Ga. L. 1988, p. 393, § 1.)

**Law reviews.** — For article surveying recent legislative and judicial developments regarding Georgia's insurance laws, see 31 Mercer L. Rev. 117 (1979).

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 44 Am. Jur. 2d, Insurance, § 1850.

**20-2-891. Health insurance fund for public school teachers.**

(a) A health insurance fund is created for public school teachers. The fund shall be available without fiscal year limitations for premiums, subscription charges, benefits, and administration costs. The amounts contributed by the state or from federal funds pursuant to this subpart shall be credited to such health insurance fund. All other income, including the income derived from dividends, premium rate adjustments, or other refunds under any such contract or contracts, shall be credited to and constitute a part of such fund. Any amounts remaining in such fund after all premiums or subscription charges and other expenses have been paid shall be retained in such fund as a special reserve for adverse fluctuation. The commissioner shall be the custodian of such health insurance fund and shall be responsible under a properly approved bond for all moneys coming into the fund and paid out of the fund as may be required to be paid to any contracting corporation under any contract entered into pursuant to this subpart and to cover administrative costs.

(b) Any amounts held by the health insurance fund which are available for investment shall be paid over to the Office of the State Treasurer. The state treasurer shall deposit such funds in a trust account for credit only to the health insurance fund. The state treasurer shall invest these health insurance funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of Title 50. All income derived from such investment shall accrue to the health insurance fund. When moneys are paid over to the Office of the State Treasurer as provided in this subsection, the commissioner shall submit an estimate of the date such funds shall no longer be available for investment. When the commissioner wishes to withdraw funds from the trust account provided for in this subsection, he or she shall submit a request for such withdrawal, in writing, to the state treasurer.

(c) Notwithstanding any provision of law to the contrary, the commissioner may combine the fund provided for in this Code section with the funds provided for in Code Section 20-2-918 and Code Section 45-18-12. (Ga. L. 1975, p. 37, § 9; Ga. L. 1977, p. 991, § 3; Ga. L. 1980, p. 963, § 2; Ga. L. 1987, p. 3, § 20; Ga. L. 1993, p. 1402, § 18; Ga. L. 1999, p. 592, § 1; Ga. L. 2000, p. 1474, § 2; Ga. L. 2005, p. 623, § 1/SB 284; Ga. L. 2010, p. 863, §§ 2, 3/SB 296.)

**The 2010 amendment**, effective July 1, 2010, in subsection (b), substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” in two places, and substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” in three places.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1994, “school teachers” was substituted for “school-teachers” in the first sentence of subsection (a).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 44 Am. Jur. 2d, Insurance, § 1852. 63C Am. Jur. 2d, Public Officers and Employees, §§ 130, 263 et seq., 346, 349.

**C.J.S.** — 67 C.J.S., Officers and Public Employees, §§ 47, 211.

**20-2-892. Contributions by employees, state, and local employers; withholding or deducting employees' contributions.**

(a) During any period in which an employee is covered under the health insurance plan authorized by this subpart prior to the date of his retirement, there shall be withheld from each salary payment of such employee, as his share of the costs of coverage under this plan, such portion of the premium or subscription charges under the terms of any contract or contracts issued in accordance with this subpart as may be established by the board. During any month in which the benefits are being paid by the Teachers Retirement System of Georgia to an individual so covered under this program, contributions shall be deducted from such payments in the amounts prescribed by the board with consent of the recipient.

(b) As the local employer's share, the local employer shall contribute to the health insurance fund such portion of the cost of such benefits as may be established by the Governor and the board and, in addition thereto, an amount to be established by the board to defray the cost of administration. The board shall determine whether such portion shall be determined based upon a percentage of the total outlay for the salaries of teachers employed by the local employer or determined on an amount per employee electing coverage under the plan based on the coverage elected, in accordance with the appropriation of funds. If a local employer fails to remit the employer's share as calculated by the commissioner, as provided in this Code section, it shall be the duty of the commissioner to notify the State Board of Education of such failure and it shall be the duty of the State Board of Education to withhold from the employer which has failed to comply all appropriations allotted to such employer until such employer has fully complied with the provisions of this Code section by making remittance of the sums required. (Ga. L. 1975, p. 37, § 10; Ga. L. 1977, p. 991, § 4; Ga. L. 1979, p. 672, § 2; Ga. L. 1986, p. 291, § 2; Ga. L. 1988, p. 319, § 1; Ga. L. 2005, p. 623, § 2/SB 284.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1986, "Teachers" was substituted for "Teachers'" in the last sentence of subsection (a).

**Law reviews.** — For article surveying recent legislative and judicial developments regarding Georgia's insurance laws, see 31 Mercer L. Rev. 117 (1979).



## RESEARCH REFERENCES

- Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 125 et seq. 78A C.J.S., Schools and School Districts, §§ 700, 701.  
**C.J.S.** — 45 C.J.S., Insurance, § 447.

**20-2-893. Providing for funds required annually for costs of employer contributions and administration of health insurance for retirees.**

At an appropriate time during each year, the commissioner shall certify to the State School Superintendent the amount of funds that will need to be paid to the board by the Department of Education for the costs of employer contributions and the administration of providing such insurance for retired teachers as provided for by Code Section 20-2-885; and in his annual budget for the Department of Education, the State School Superintendent shall make provision for funds sufficient to pay the board such payment. (Ga. L. 1975, p. 37, § 11; Ga. L. 1977, p. 991, § 5; Ga. L. 1982, p. 3, § 20; Ga. L. 1986, p. 291, § 3.)

## RESEARCH REFERENCES

- C.J.S.** — 67 C.J.S., Officers and Public Employees, § 214.

**20-2-894. Employer and employee commencement dates; coverage of new employees; rejection of coverage.**

(a) On July 1, 1977, or on a date as soon thereafter as practicable, as determined by the board, which is defined as the "employer commencement date" the commissioner shall notify the State School Superintendent that the employer payments shall commence on such date. The Superintendent shall notify the employees that employee payments will commence on a date, as determined by the board, which shall not be less than three calendar months following the employer commencement date. The date as established by the board with reference to the employee payments is defined as the "employee commencement date." Upon establishment of the employer commencement date, the provisions of this subpart with reference to such payments shall go into effect. In determining the commencement dates as provided in this subsection, the board shall be governed by the money made available by the state to implement this subpart.

(b) All persons who become employees as defined in this subpart on or after the employer commencement date and who are eligible as specified by rules and regulations of the board shall become members of this health insurance plan authorized by this subpart, unless the employee rejects or waives such coverage in writing. (Ga. L. 1975, p. 37,

§ 12; Ga. L. 1977, p. 991, § 6; Ga. L. 1978, p. 1698, § 2; Ga. L. 1979, p. 672, § 3.)

**Law reviews.** — For article surveying recent legislative and judicial developments regarding Georgia's insurance laws, see 31 Mercer L. Rev. 117 (1979).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 44 Am. Jur. 2d, Insurance, § 1994.

## 20-2-895. Contracts with local employers as to coverage; duties of local employers.

The board is authorized to contract with local employers for the inclusion of the teachers or employees of local employers within any health insurance plan or plans established under this subpart. Local employers are authorized to contract with the board as provided in this Code section. In the event that any contract is entered into, it shall be the duty of any local employers so contracting to deduct from the salary or other compensation of their teachers or employees such payment as may be required under any health insurance plan and to remit the funds to the board for inclusion in the health insurance fund. In addition, it shall be the duty of such local employers to make the employer contributions required for the operation of such plan or plans. For the purposes of this Code section, the term "teachers" shall mean certificated personnel and the term "employees" shall mean all other personnel. (Ga. L. 1975, p. 37, § 13; Ga. L. 1977, p. 991, § 7; Ga. L. 1986, p. 291, § 4.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1986, "Code section" was substituted for "subsection" in both the second and last sentences.

### OPINIONS OF THE ATTORNEY GENERAL

**Local boards may contract to provide insurance for teachers and other employees.** — Effective July 1, 1977, the local boards of education and the State Personnel Board will be authorized to enter into contracts to provide health insurance for public school teachers and other employees of the local boards, so long as the local boards pay the entire employer's contribution for the insurance.

1977 Op. Att'y Gen. No. U77-22 (decided prior to amendment by Ga. L. 1986, p. 291, § 4).

**Contracts with outside entities not authorized.** — Local boards of education are not authorized to contract for insurance with entities other than the State Personnel Board. 1996 Op. Att'y Gen. No. 96-3.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 44 Am. Jur. 2d, Insurance, § 1994.

**20-2-896. Administrative discharge of certain debts.**

(a) It is the purpose of this Code section to authorize a procedure whereby the commissioner of community health may administratively discharge a debt or obligation due the health insurance fund for public school teachers when the amount is \$400.00 or less and:

(1) It is manifest that the debt or obligation is uncollectable; or

(2) The costs of collecting the debt or obligation would be equal to or greater than the amount due the fund.

(b) In order to conserve the health insurance funds, the commissioner of community health is authorized to develop a procedure that complies with the policies prescribed by the state accounting officer for the administrative discharge of any debt or obligation due the insurance fund when such debt or obligation is \$400.00 or less. This provision shall not be construed to deny to the commissioner the authority to pursue the collection of any debt, obligation, or claim in any amount whatsoever when such pursuit is in the best interest of the insurance fund.

(c) Upon a formal determination that a debt or obligation to the insurance fund of \$400.00 or less is uncollectable, or that the costs of collection would equal or exceed the amount due the fund, the commissioner of community health shall execute and transmit to the state accounting officer a certification which includes the following: a recapitulation of the efforts made to collect the debt or obligation; an estimate of the costs to pursue collection of the debt or obligation administratively or judicially; such other information as may be required by the procedure developed by the commissioner and the state accounting officer; and a statement that further collection effort would be detrimental to the financial interests of the fund. The certification shall be made under oath or affirmation and shall be sent to the state accounting officer at such times as shall be prescribed in the procedure developed by the commissioner and the state accounting officer. Upon receipt of the certification, the state accounting officer shall be authorized to approve the removal of such uncollectable amounts from the financial records of the fund. (Code 1981, § 20-2-896, enacted by Ga. L. 1988, p. 393, § 2; Ga. L. 1999, p. 296, § 26; Ga. L. 2005, p. 694, § 26/HB 293.)

**20-2-897. Confidentiality of claim forms and records.**

Claim forms and other records which would disclose the nature of the health services provided to an insured shall be maintained on a confidential basis by the health insurance plan. No person shall disclose such records or information to any other person except as necessary for



the proper administration of the health insurance plan. (Code 1981, § 20-2-897, enacted by Ga. L. 1989, p. 1143, § 3.)

### **20-2-898. Deposit of contributions into Georgia Retiree Health Benefit Fund.**

Notwithstanding any other provisions of this subpart, the board shall deposit into the Georgia Retiree Health Benefit Fund created by Code Section 45-18-101 the individual contributions by retirees and the employer contributions respecting retirees provided for by this subpart. (Code 1981, § 20-2-898, enacted by Ga. L. 2007, p. 77, § 1/SB 172.)

### **Subpart 3**

#### **Plan for Public School Employees**

**Editor's notes.** — Due to the passage of Ga. L. 2009, p. 49, former Subpart 1, consisting of Code Sections 20-2-880 through 20-2-898 was redesignated as present Subpart 2. Former Subpart 2, consisting of Code Sections 20-2-910 through 20-2-926, was redesignated as Subpart 3.

### **20-2-910. Definitions.**

As used in this subpart, the term:

(1) "Board" means the Board of Community Health established under Chapter 2 of Title 31.

(2) "Commissioner" means the commissioner of community health established under Chapter 2 of Title 31.

(3) "Public school employee" means an "employee" as defined in paragraph (20) of Code Section 47-4-2. "Public school employee" also means classroom aides, paraprofessionals, and noncertified administrative and clerical personnel. It is specifically provided, however, that the term "public school employee" shall not include any emergency or temporary employee or any other employee who works in a position otherwise covered by such term less than 60 percent of the time required to carry out the duties of such position. "Public school employee" also means any person, other than an employee in a professionally certificated capacity or position, employed not less than half time and compensated in a charter school in this state established pursuant to Article 31 of Chapter 2 of Title 20 if such charter school elects upon initial approval of its charter or, if such charter school is an existing charter school, elects upon notice by the health insurance plan provided in this part or upon the expiration of its current health care plan to participate in the health insurance plan established pursuant to this subpart. Notwithstanding this definition or any other provision of this subpart, the board may, by

regulation, make available to employees who work 17 1/2 hours or more per week such benefits as are required to be made available to such employees by regulations of the United States Internal Revenue Service or any other federal authority.

(4) “Qualified entity” means any person, association, corporation, or other legal entity with which the board is authorized under Chapter 18 of Title 45 to contract. (Ga. L. 1975, p. 1194, § 1; Ga. L. 1980, p. 1538, § 1; Ga. L. 1982, p. 896, § 1; Ga. L. 1983, p. 3, § 16; Ga. L. 1989, p. 1146, § 1; Ga. L. 1999, p. 296, § 26; Ga. L. 2008, p. 612, § 2/HB 1277; Ga. L. 2009, p. 453, § 1-7/HB 228.)

**Editor’s notes.** — Georgia Laws 1982, p. 896, § 1, effective July 1, 1982, amended Ga. L. 1975, p. 1194, § 1, as amended, the basis for this Code section, by adding a provision regarding the applicability of the term “public school employee” to emergency or temporary employees. However, the 1982 Act did not specifically amend this Code section. Fur-

thermore, since Ga. L. 1975, p. 1194, § 1 stood repealed on November 1, 1982 (see Code Section 1-1-10(a)(2)), the 1982 amendment was of no effect after that date. The provisions of Ga. L. 1982, p. 896, § 1 were substantially reenacted by Ga. L. 1983, p. 3, § 16, and codified as an amendment to this Code section.

#### JUDICIAL DECISIONS

**Cited in** Live Oak Consulting, Inc. v. Dep’t of Cmty. Health, 281 Ga. App. 791, 637 S.E.2d 455 (2006).

#### **20-2-911. Board to establish plan; rules and regulations; extent of coverage; recommendations to General Assembly for schedule of maximum fees for hospitals and practitioners.**

(a) The board is authorized to establish a health insurance plan for public school employees of this state and to adopt and promulgate rules and regulations for its administration, subject to the limitations contained in this subpart. Such plan may provide for group hospitalization, surgical, and medical insurance against the financial costs of hospitalization, surgery, and medical treatment and care and may also include, among other things, prescribed drugs, medicines, prosthetic appliances, hospital inpatient and outpatient service benefits, and medical expense indemnity benefits, including major medical benefits.

(b) The board shall investigate fees of hospitals, pharmacists, and practitioners of the healing arts and present recommendations to the General Assembly by not later than January 15, 1991, for a schedule of maximum fees for hospitals and practitioners of the healing arts. The recommended fees for hospitals shall be determined based upon a statistical analysis of the peer groups adjusted for the intensity of the case mix for hospitals of same licensure classification or subclassifica-

tion (e.g., general, pediatric, psychiatric, rehabilitation, etc.) and of similar services in the same geographic area. The recommended fee schedule shall not be at the average of the usual and customary charges if the board determines that the average represents an unreasonably high or low charge.

(c) The recommended fees for practitioners of the healing arts and pharmacists shall be determined based upon a statistical analysis of the peer groups for such practitioners and pharmacists of the same licensure classification (e.g., internists, family practitioners, cardiologists, neurosurgeons, etc.) and of similar services in the same geographic area. The recommended fee schedule shall not be at the average of the usual and customary charges if the board determines that the average represents an unreasonably high or low charge.

(d) The recommendations shall include an analysis of all hospitals, pharmacists, and practitioners accepting assignment of benefits for such services not to exceed the amount authorized by the fee schedule. The board shall publish in print or electronically a list of practitioners who accept assignment of benefits under the plan.

(e) The recommendations shall include an analysis of the impact of practitioners agreeing to provide medical or surgical services at a reduced rate for members of the health insurance plan and of pharmacists and hospitals agreeing to provide hospital services, medical equipment, or pharmaceuticals at a reduced rate for members of the health insurance plan. The board shall publish in print or electronically a list of practitioners of the healing arts, pharmacists, and hospitals that offer a reduced rate for members and the rate at which those services, equipment, or pharmaceuticals have been offered. (Ga. L. 1975, p. 1194, § 2; Ga. L. 1990, p. 1924, § 2; Ga. L. 1991, p. 94, § 20; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2012, p. 775, § 20/HB 942.)

**The 2010 amendment**, effective June 3, 2010, inserted “in print or electronically” in the last sentence of subsections (d) and (e).

**The 2012 amendment**, effective May

1, 2012, part of an Act to revise, modernize, and correct the Code, substituted “practitioners who accept” for “practitioners that accept” in the second sentence of subsection (d).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 44 Am. Jur. 2d, Insurance, § 1842 et seq.

**C.J.S.** — 81A C.J.S., States, § 120.

## JUDICIAL DECISIONS

**Cited in** Live Oak Consulting, Inc. v. Dep’t of Cmty. Health, 281 Ga. App. 791, 637 S.E.2d 455 (2006).



**20-2-912. Exclusions from coverage.**

Such health insurance plan shall not include expenses incurred by, or on account of, an individual prior to the effective date of the plan as to him; services received for injury or sickness due to war or any act of war, whether declared or undeclared, which war or act of war shall have occurred after the effective date of this plan; expenses for which the individual is not required to make payment; expenses to the extent of benefits provided under any employer group plan other than this plan in the cost of which the state participates; and such other expenses as may be excluded by the regulations of the board. (Ga. L. 1975, p. 1194, § 3.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 44 Am. Jur. 2d, Insurance, §§ 257, 1853, 1855.

**20-2-913. Design of plan; controls on unnecessary use of services.**

The health insurance plan shall be designed by the board to:

(1) Provide a reasonable relationship between the hospital, surgical, and medical benefits to be included and the expected distribution of expenses of each such type to be incurred by the covered employees and dependents; and

(2) Include reasonable controls, which may include deductible and coinsurance provisions applicable to some or all of the benefits, to reduce unnecessary utilization of the various hospital, surgical, and medical services to be provided, and to provide reasonable assurance of stability in future years of the plan. (Ga. L. 1975, p. 1194, § 4.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 44 Am. Jur. 2d, Insurance, § 1847.

**20-2-914. Contracts for benefits or self-insurance authorized; reinsurance; certificates of coverage.**

(a) The board is authorized to execute a contract or contracts to provide the benefits determined upon under the health insurance plan in accordance with this subpart, or the board may, in its discretion, establish a self-insured plan in whole or in part. All of the benefits to be provided under the plan may be included in one or more similar contracts, or the benefits may be classified into different types with each type included in one or more contracts issued by the same or

different qualified entities or covered under a self-insured plan. A reasonable time before entering into any insurance contract under this subpart, the board shall invite proposals from such qualified entities as, in the opinion of the board, would desire to accept any part of the insurance coverage authorized by this subpart; provided, however, that the board may, in its discretion, establish a self-insured plan in whole or in part.

(b) The board may arrange with any qualified entity issuing any such contract to reinsure portions of such contract with any other such qualified entity which elects to be a reinsurer and is legally competent to enter into a reinsurance agreement. The board may designate one or more of such qualified entities as the administering qualified entity or entities.

(c) Each employee who is covered under any such contract or contracts shall receive a certificate setting forth the benefits to which the employee and his dependents are entitled thereunder, to whom such benefits shall be payable, to whom claims should be submitted, and summarizing the provisions of the contract principally affecting the employee and his dependents. Such certificate shall be in lieu of the certificate which the corporation or corporations issuing such contract or contracts would otherwise issue.

(d) The qualified entities eligible to participate as reinsurers and the amount of coverage under the contract or contracts to be allocated to each issuing qualified entity or reinsurer may be redetermined by the board for and in advance of any contract year after the first year and with any modifications thereof it deems appropriate to carry out the intent of such subdivision, subject to such limitations as set forth in this subpart. The board may, at the end of any contract year, discontinue any contract or contracts it has executed with any qualified entity or entities and replace it or them with a contract or contracts in any other qualified entity or entities meeting the requirements of this Code section or may, in its discretion, establish a self-insured plan in whole or in part. (Ga. L. 1975, p. 1194, § 5; Ga. L. 1980, p. 1538, § 2.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 44 Am. Jur. 2d, Insurance, §§ 1851, 1852.

**C.J.S.** — 81A C.J.S., States, § 120.

#### **20-2-915. Coverage for retiring and retired public school and certain community college employees and dependents; subordination to federal program.**

(a) The contract or contracts shall provide for health insurance for retiring public school employees and their spouses and dependent

children, as defined by the regulations of the board, under such terms as the board may deem appropriate. The board shall adopt regulations prescribing the conditions under which an employee or retiring employee may elect to participate in or withdraw from the health insurance plan; provided, however, that any such persons who are eligible to receive a benefit under Chapter 3 or 4 of Title 47 shall be entitled to continue health benefit coverage from active service by authorizing deductions from the retiree's retirement benefit or by paying a premium directly to the board as provided by the rules and regulations of the board. For retirees who pay directly, the participation rate shall be the same as the rate charged to other retired direct payees. Surviving spouses of direct paying retirees shall be eligible to continue coverage at the death of the retiree under the same conditions as the retiree but shall not be eligible to include additional persons in the contract after the retiree's death. The board may limit the choices of direct paying retirees to the level of coverage supported by the employer contribution authorized under this Code section.

(b) The contract or contracts shall provide for health insurance for retired former public school employees and retired former employees of a community college operated and funded by a local school system and their spouses and dependent children, as defined by the regulations of the board, under such terms as the board may deem appropriate. The former retired employees shall include individuals who retired prior to January 1, 1985, who were covered by an employer group health plan at the time of retirement and who receive benefits from one of the retirement systems operated by the state or by a local school system. The costs of employer contributions and the administration of providing such insurance may be assessed against such retired former employees or may be appropriated to the Department of Education. Such retired former employees shall pay premiums for such health insurance in an amount set by the board after consideration of the amount appropriated to the Department of Education. The board shall adopt regulations prescribing the conditions under which a retired former employee may elect to participate in or withdraw from the plan.

(c) If a retiring or retired public school employee or the beneficiary of such retiring or retired public school employee exercises eligibility under board regulations to continue coverage under the plan and the retiring or retired public school employee or the beneficiary is eligible to participate in the insurance program operated by or on behalf of the federal government under the provisions of 42 U.S.C.A. 1395, as amended, the coverage available under the public school employees' health insurance plan shall be subordinated to the coverage available under such federal program. The board is authorized to promulgate regulations to establish the premium paid by the retiring or retired public school employee or beneficiary to reflect the subordination of



coverage. (Ga. L. 1975, p. 1194, § 6; Ga. L. 1987, p. 1037, § 1; Ga. L. 1989, p. 1146, § 2; Ga. L. 1993, p. 1987, § 1; Ga. L. 1998, p. 1034, § 1; Ga. L. 2005, p. 623, § 3/SB 284.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1989, “State” was deleted preceding “Department of Education” twice in subsection (b).

### RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 120.

#### **20-2-915.1. Coverage for employees with eight or more years of creditable service; premiums.**

(a) Notwithstanding any other provisions of this subpart to the contrary, the board shall offer continuous coverage to any public school employee with eight or more years of creditable service who is not eligible to receive retirement benefits because of age. The public school employee shall pay both the employer and employee premiums for such insurance coverage.

(b) Notwithstanding any other provisions of this subpart to the contrary, any public school employee eligible to elect continuous coverage pursuant to subsection (a) of this Code section shall pay the employer and employee premiums for such coverage in monthly installments. The amount of the monthly premiums shall be equal to the rate of employer and employee contributions in effect during the existence of the coverage. (Code 1981, § 20-2-915.1, enacted by Ga. L. 1986, p. 1601, § 1; Ga. L. 1994, p. 426, § 1; Ga. L. 2001, p. 1094, § 2.)

#### **20-2-915.2. Coverage of dependents after death of employee.**

At the time of death of any employee, annuitant, or other person who has elected coverage under said contract or contracts for health insurance and who dies having the required creditable service for receiving a benefit from a retirement system of this state which is operated for teachers or public school employees, any spouse or dependent child or children included in the coverage of the contract or contracts for health insurance as provided in this subpart may be entitled to continue such coverage upon agreeing to pay contributions to the cost of such coverage as may be provided by rules and regulations of the board. The board shall be authorized to promulgate and adopt rules and regulations governing the continuance, discontinuance, and resumption of coverage by any such spouse or dependent child or children. The board shall be authorized to promulgate rules and regulations governing the continuance of coverage by a spouse and dependent children of a retired employee when retirement benefits are insufficient for payment of the

health insurance premium. (Code 1981, § 20-2-915.2, enacted by Ga. L. 1986, p. 1601, § 1.)

### **20-2-916. Coverage for dependents; agreement to pay contributions.**

Each employee shall be entitled to have his spouse and dependent children, as defined by the regulations of the board, included in the coverage, upon agreeing to pay his contributions to the cost of such coverage for such dependents. The board shall adopt regulations governing the discontinuance and resumption by employees of coverage for dependents. (Ga. L. 1975, p. 1194, § 7.)

#### **RESEARCH REFERENCES**

**Am. Jur. 2d.** — 44 Am. Jur. 2d, Insurance, § 1853.

**C.J.S.** — 81A C.J.S., States, § 120.

### **20-2-917. Payment of benefits.**

(a) Any benefits payable under the health insurance plan may be made either directly to the attending physicians, hospitals, medical groups, or others furnishing the services upon which a claim is based or to the covered employee upon presentation of valid bills for such services, subject to such provisions to facilitate payment as may be made by the board.

(b) Such claims must be presented in writing to the board or its designee within two years from the date the service was rendered, or else no benefits will be owed or paid.

(c) All drafts or checks issued by the board or its designee shall be void if not presented and accepted by the drawer's bank within six months of the date the draft or check was drawn. If the payee or member does not present the draft or check for acceptance during the seven years following the date the draft or check was issued, the draft or check will be void, funds will be retained in the insurance fund, and further payments for such claim will not be owed or paid. (Ga. L. 1975, p. 1194, § 8; Ga. L. 1988, p. 393, § 3.)

#### **RESEARCH REFERENCES**

**Am. Jur. 2d.** — 44 Am. Jur. 2d, Insurance, § 1850.

**20-2-918. Health insurance fund for public school employees.**

(a) There is created a health insurance fund for public school employees. The fund shall be available without fiscal year limitations for premiums, subscription charges, benefits, and administration costs. The amounts contributed by the state or from federal funds pursuant to this subpart shall be credited to such health insurance fund. All other income, including the income derived from dividends, premium rate adjustments, or other refunds under any such contract or contracts, shall be credited to and constitute a part of such fund. Any amounts remaining in such fund after all premiums or subscription charges and other expenses have been paid shall be retained in such fund as a special reserve for adverse fluctuation. The commissioner shall be the custodian of such health insurance fund and shall be responsible under a properly approved bond for all moneys coming into the fund and paid out of the fund as may be required to be paid to any contracting qualified entity under any contract entered into pursuant to this subpart and to cover administrative costs.

(b) Notwithstanding any provision of law to the contrary, the commissioner may combine the fund provided for in this Code section with the funds provided for in Code Section 20-2-891 and Code Section 45-18-12. (Ga. L. 1975, p. 1194, § 9; Ga. L. 2005, p. 623, § 4/SB 284.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 44 Am. Jur. 2d, Insurance, § 1852. 63C Am. Jur. 2d, Public Officers and Employees, §§ 130, 263 et seq., 346 et seq.

**C.J.S.** — 67 C.J.S., Officers and Public Employees, §§ 47, 211.

**20-2-919. Investment of health insurance fund.**

Any amounts held by the health insurance fund which are available for investment shall be paid over to the Office of the State Treasurer. The state treasurer shall deposit such funds in a trust account for credit only to the health insurance fund. The state treasurer shall invest these health insurance funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of Title 50. All income derived from such investments shall accrue to the health insurance fund. When moneys are paid over to the Office of the State Treasurer, as provided in this Code section, the commissioner shall submit an estimate of the date such funds shall no longer be available for investment. When the commissioner wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal, in writing, to the state treasurer. (Ga. L. 1980, p. 1538, § 4; Ga. L. 1993, p. 1402, § 18; Ga. L. 1999, p. 592, § 2; Ga. L. 2000, p. 1474, § 3; Ga. L. 2010, p. 863, §§ 2, 3/SB 296.)



**The 2010 amendment**, effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” in two places and substituted

“state treasurer” for “director of the Office of Treasury and Fiscal Services” in three places.

**20-2-920. Withholding or deducting employees’ contributions; state contributions; enrollment of employees of school system not participating in the plan.**

(a) During any period in which an employee is covered under the health insurance plan authorized by this subpart prior to the date of the employee’s retirement, there shall be withheld from each salary payment of such employee, as the employee’s share of the cost of coverage under this plan, such portion of the premium or subscription charges under the terms of any contract or contracts issued in accordance with this subpart as may be established by the board. During any month in which benefits are being paid by a public school employees’ retirement system to an individual so covered under this program, contributions shall be deducted from such payments in the amounts prescribed by the board with the consent of the recipient.

(b) The Department of Education and local school systems shall contribute to the health insurance fund such portion of the costs of such benefits as may be established by the board to maintain the employee contributions consistent with other health insurance plans administered by the board. In the event that the commissioner shall determine that a local employer has failed to contribute the full amount of such portion, as calculated by the commissioner, it shall be the duty of the commissioner to notify the State Board of Education of such failure and it shall be the duty of the State Board of Education to withhold from the employer which has failed to comply all appropriations allotted to such employer until such employer has fully complied with the provisions of this Code section by making remittance of the sums required.

(c) If a local school system elects not to participate in the health insurance plan, the board may establish regulations by which the employees of such local school system may enroll as a group, provided an adequate participation percentage is maintained to assure a sound policy of shared risk. (Ga. L. 1975, p. 1194, § 10; Ga. L. 1980, p. 1538, § 3; Ga. L. 1982, p. 896, § 2; Ga. L. 1983, p. 3, § 16; Ga. L. 1984, p. 1692, § 1; Ga. L. 1985, p. 149, § 20; Ga. L. 2005, p. 623, § 5/SB 284.)

**Editor’s notes.** — Ga. L. 1982, p. 896, § 2, effective July 1, 1982, amended Ga. L. 1975, p. 1194, § 10, as amended, the basis for this Code section, by substituting “employee” for “employer” in the last sentence of that section of the 1975 Act. However, the 1982 Act did not specifically

amend this Code section. Furthermore, since Ga. L. 1975, p. 1194, § 10 stood repealed on November 1, 1982 (see Code Section 1-1-10(a)(2)), the 1982 amendment was of no effect after that date. The provisions of Ga. L. 1982, p. 896, § 1 were substantially reenacted by Ga. L. 1983, p.

3, § 16, and codified as an amendment to this Code section.

**20-2-921. Providing for funds required annually for employer contributions.**

At an appropriate time during each year, the commissioner shall certify to the State School Superintendent the amount of funds determined by the board as employer payments for the ensuing fiscal year and, in his annual budget for the Department of Education, the Superintendent shall have provision for funds sufficient to pay the board such required employer payments. (Ga. L. 1975, p. 1194, § 11; Ga. L. 1980, p. 1538, § 5.)

**OPINIONS OF THE ATTORNEY GENERAL**

**Payment of contributions from other funds.** — Contributions of local school systems to the health insurance fund for noncertificated personnel may not be taken from those funds allocated under former O.C.G.A. § 20-2-153 (kindergarten program) and former O.C.G.A. § 20-2-163 (compensatory education program). 1985 Op. Att’y Gen. No. 85-12.

**RESEARCH REFERENCES**

**C.J.S.** — 67 C.J.S., Officers and Public Employees, § 214.

**20-2-922. Employer and employee commencement dates; option to reject or elect coverage.**

(a) On a date as soon as practicable, as determined by the board, which is defined as the “employer commencement date,” the commissioner shall notify the State School Superintendent and local school superintendents that the employer payments shall commence on such date. The State School Superintendent shall notify the employees that employee payments will commence on a date following the employer commencement date, which will be determined by the board. The date as established by the board with reference to the employee payments is defined as the “employee commencement date.”

(b) Any employee who is otherwise eligible in accordance with rules and regulations of the board shall have an option to elect coverage in this program, and, in the event an employee rejects coverage, such employee shall be authorized to obtain coverage at a later date upon compliance with the rules and regulations promulgated by the board relative thereto. (Ga. L. 1975, p. 1194, § 12; Ga. L. 1980, p. 1538, § 6; Ga. L. 1984, p. 1692, § 2; Ga. L. 1985, p. 149, § 20.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 44 Am. Jur. 2d, Insurance, § 1853.

**20-2-923. Option of local boards as to coverage.**

Local school boards shall have the option to determine whether or not the public school employees within their respective systems shall be covered under this subpart. (Ga. L. 1975, p. 1194, § 13; Ga. L. 1980, p. 1538, § 7.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 78.      **C.J.S.** — 78 C.J.S., Schools and School Districts, § 138 et seq.

**20-2-924. Administrative discharge of certain debts.**

(a) It is the purpose of this Code section to authorize a procedure whereby the commissioner of community health may administratively discharge a debt or obligation due the health insurance fund for public school employees when the amount is \$400.00 or less and:

(1) It is manifest that the debt or obligation is uncollectable; or

(2) The costs of collecting the debt or obligation would be equal to or greater than the amount due the fund.

(b) In order to conserve the health insurance funds, the commissioner of community health is authorized to develop a procedure that complies with the policies prescribed by the state accounting officer for the administrative discharge of any debt or obligation due the insurance fund when such debt or obligation is \$400.00 or less. This provision shall not be construed to deny to the commissioner the authority to pursue the collection of any debt, obligation, or claim in any amount whatsoever when such pursuit is in the best interest of the insurance fund.

(c) Upon a formal determination that a debt or obligation to the insurance fund of \$400.00 or less is uncollectable, or that the costs of collection would equal or exceed the amount due the fund, the commissioner of community health shall execute and transmit to the state accounting officer a certification which includes the following: a recapitulation of the efforts made to collect the debt or obligation; an estimate of the costs to pursue collection of the debt or obligation administratively or judicially; such other information as may be required by the procedure developed by the commissioner and the state accounting officer; and a statement that further collection effort would



be detrimental to the financial interests of the fund. The certification shall be made under oath or affirmation and shall be sent to the state accounting officer at such times as shall be prescribed in the procedure developed by the commissioner and the state accounting officer. Upon receipt of the certification, the state accounting officer shall be authorized to approve the removal of such uncollectable amounts from the financial records of the fund. (Code 1981, § 20-2-924, enacted by Ga. L. 1988, p. 393, § 4; Ga. L. 1999, p. 296, § 26; Ga. L. 2005, p. 694, § 27/HB 293.)

#### **20-2-925. Confidentiality of claim forms and records.**

Claim forms and other records which would disclose the nature of the health services provided to an insured shall be maintained on a confidential basis by the health insurance plan. No person shall disclose such records or information to any other person except as necessary for the proper administration of the health insurance plan. (Code 1981, § 20-2-925, enacted by Ga. L. 1989, p. 1146, § 3.)

#### **20-2-926. Deposit of contributions into Georgia Retiree Health Benefit Fund.**

Notwithstanding any other provisions of this subpart, the board shall deposit into the Georgia Retiree Health Benefit Fund created by Code Section 45-18-101 the individual contributions by retirees and the employer contributions respecting retirees provided for by this subpart. (Code 1981, § 20-2-926, enacted by Ga. L. 2007, p. 77, § 2/SB 172.)

### **PART 6A**

#### **PROFESSIONAL LIABILITY INSURANCE**

**Cross references.** — State tort claims,  
T. 50, C. 21.

#### **20-2-930. Professional liability insurance coverage for teachers and other school personnel.**

(a) For purposes of this Code section, the term:

(1) "Certificated personnel" means all teachers, principals, and other education personnel certificated by the Professional Standards Commission.

(2) "Student teacher" means a college or university student in an education degree program in a unit of the University System of Georgia or in a private postsecondary institution who, as part of the degree program, is in a local school system in a classroom setting providing instruction to students and being mentored by a teacher.

(b) The Department of Administrative Services shall be authorized to purchase or provide a policy or policies of professional liability insurance, subject to appropriations by the General Assembly, insuring certificated personnel who are employed by a local school system and student teachers. Such policy or policies shall protect against damages arising out of the performance of their duties or in any way connected therewith. The amount of such insurance and the appropriate coverages shall be in the discretion of the Department of Administrative Services, subject to specific appropriations by the General Assembly.

(c) Insurance coverage provided pursuant to this Code section shall automatically cover all certificated personnel who are employed by a local school system and student teachers and shall be at no cost to such certificated personnel or student teachers.

(d) The program of insurance under this part shall be administered by the Department of Administrative Services and such department shall be authorized to promulgate any necessary rules and regulations to implement such program.

(e) The program of insurance shall be effective for insurance coverage of certificated personnel and student teachers no later than July 1, 2005. (Code 1981, § 20-2-930, enacted by Ga. L. 2005, p. 717, § 3/SB 34.)

**Law reviews.** — For article on 2005 enactment of this Code section, see 22 Ga. St. U. L. Rev. 83 (2005).

PART 7

TERMINATION, SUSPENSION, NONRENEWAL, DEMOTION, OR REPRIMAND

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| <b>Law reviews.</b> — For article, “Teachers’ Freedom of Expression Within the Classroom: A Search for Standards,” see 8 Ga. L. Rev. 837 (1974). | For note discussing teachers’ freedom of expression outside the classroom, see 8 Ga. L. Rev. 900 (1974). |
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JUDICIAL DECISIONS

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| <b>Cited</b> in Palmer v. State Bd. of Educ., 143 Ga. App. 315, 238 S.E.2d 255 (1977); Owen v. Long County Bd. of Educ., 245 | Ga. 647, 266 S.E.2d 461 (1980); Rockdale County Sch. Dist. v. Weil, 245 Ga. 730, 266 S.E.2d 919 (1980). |
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OPINIONS OF THE ATTORNEY GENERAL

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| <b>Part has no application to the office of county school superintendent</b> because the superintendent is a public officer rather than a school board employee, | whether or not the superintendent is appointed and given a contract for a definite term by the county board of education. 1977 Op. Att’y Gen. No. U77-17. |
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**Teacher who ends a third school year of employment under contract,** but has not yet been offered a fourth school year contract, is entitled to protections of O.C.G.A. § 20-2-940 et seq. if the local superintendent decides not to renew the contract for the fourth school year. 1981 Op. Att'y Gen. No. 81-94.

**Nontenured teacher not entitled to hearing or statement of reasons upon nonrenewal.** — O.C.G.A. § 20-2-940 et

seq. does not require a hearing or a statement of reasons be given a nontenured teacher whose contract is simply not renewed. 1982 Op. Att'y Gen. No. U82-2.

No statement of reasons for nonrenewal of a nontenured teacher's contract is required. If a local school board desires to give reasons, the reasons should be given only orally in a private meeting between an appropriate school official and the teacher. 1982 Op. Att'y Gen. No. U82-2.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 219 et seq.

**Am. Jur. Proof of Facts.** — Defense of a Teacher Charged with Unfitness to Teach, 38 POF3d 63.

Proof that a Teacher's License was Improperly Revoked: Teacher's Damages and Emotional Stress Award, 66 POF3d 541.

**ALR.** — Teacher as an officer whose right may be tested by quo warranto, 30 ALR 1423.

Teachers' tenure statutes, 113 ALR 1495; 127 ALR 1298.

Elements and measure of damages in action by schoolteacher for wrongful discharge, 22 ALR3d 1047.

Who is "teacher" for purposes of tenure statute, 94 ALR3d 141.

Sufficiency of notice of intention to discharge or not to rehire teacher, under statutes requiring such notice, 52 ALR4th 301.

Validity and construction of statutes, ordinances, or regulations requiring competency tests of schoolteachers, 64 ALR4th 642.

### **20-2-940. (Effective until January 1, 2013. See note.) Grounds and procedure for terminating or suspending contract of employment.**

(a) **Grounds for termination or suspension.** Except as otherwise provided in this subsection, the contract of employment of a teacher, administrator, or other employee having a contract for a definite term may be terminated or suspended for the following reasons:

- (1) Incompetency;
- (2) Insubordination;
- (3) Willful neglect of duties;
- (4) Immorality;

(5) Inciting, encouraging, or counseling students to violate any valid state law, municipal ordinance, or policy or rule of the local board of education;

(6) To reduce staff due to loss of students or cancellation of programs and due to no fault or performance issue of the teacher, administrator, or other employee. In the event that a teacher, administrator, or other employee is terminated or suspended pursu-



ant to this paragraph, the local unit of administration shall specify in writing to such teacher, administrator, or other employee that the termination or suspension is due to no fault or performance issues of such teacher, administrator, or other employee;

(7) Failure to secure and maintain necessary educational training;  
or

(8) Any other good and sufficient cause.

A teacher, administrator, or other employee having a contract of employment for a definite term shall not have such contract terminated or suspended for refusal to alter a grade or grade report if the request to alter a grade or grade report was made without good and sufficient cause.

(b) **Notice.** Before the discharge or suspension of a teacher, administrator, or other employee having a contract of employment for a definite term, written notice of the charges shall be given at least ten days before the date set for hearing and shall state:

(1) The cause or causes for his or her discharge, suspension, or demotion in sufficient detail to enable him or her fairly to show any error that may exist therein;

(2) The names of the known witnesses and a concise summary of the evidence to be used against him or her. The names of new witnesses shall be given as soon as practicable;

(3) The time and place where the hearing thereon will be held; and

(4) That the charged teacher or other person, upon request, shall be furnished with compulsory process or subpoena legally requiring the attendance of witnesses and the production of documents and other papers as provided by law.

(c) **Service.** All notices required by this part relating to suspension from duty shall be served either personally or by certified mail or statutory overnight delivery. All notices required by this part relating to demotion, termination, nonrenewal of contract, or reprimand shall be served by certified mail or statutory overnight delivery. Service shall be deemed to be perfected when the notice is deposited in the United States mail addressed to the last known address of the addressee with sufficient postage affixed to the envelope.

(d) **Counsel; testimony.** Any teacher, administrator, or other person against whom such charges listed in subsection (a) of this Code section have been brought shall be entitled to be represented by counsel and, upon request, shall be entitled to have subpoenas or other compulsory process issued for attendance of witnesses and the production of documents and other evidence. Such subpoenas and compulsory

process shall be issued in the name of the local board and shall be signed by the chairperson or vice chairperson of the local board. In all other respects, such subpoenas and other compulsory process shall be subject to Part 1 of Article 2 of Chapter 10 of Title 24, as now or hereafter amended.

(e) **Hearing.**

(1) The hearing shall be conducted before the local board, or the local board may designate a tribunal to consist of not less than three nor more than five impartial persons possessing academic expertise to conduct the hearing and submit its findings and recommendations to the local board for its decision thereon.

(2) The hearing shall be reported at the local board's expense. If the matter is heard by a tribunal, the transcript shall be prepared at the expense of the local board and an original and two copies shall be filed in the office of the superintendent. If the hearing is before the local board, the transcript need not be typed unless an appeal is taken to the State Board of Education, in which event typing of the transcript shall be paid for by the appellant. In the event of an appeal to the state board, the original shall be transmitted to the state board as required by its rules.

(3) Oath or affirmation shall be administered to all witnesses by the chairperson, any member of the local board, or by the local board attorney. Such oath shall be as follows:

"You do solemnly swear (or affirm) that the evidence shall be the truth, the whole truth, and nothing but the truth. So help you God."

(4) All questions relating to admissibility of evidence or other legal matters shall be decided by the chairperson or presiding officer, subject to the right of either party to appeal to the full local board or hearing tribunal, as the case may be; provided, however, that the parties by agreement may stipulate that some disinterested member of the State Bar of Georgia shall decide all questions of evidence and other legal issues arising before the local board or tribunal. In all hearings, the burden of proof shall be on the school system, and it shall have the right to open and to conclude. Except as otherwise provided in this subsection, the same rules governing nonjury trials in the superior court shall prevail.

(f) **Decision; appeals.** The local board shall render its decision at the hearing or within five days thereafter. Where the hearing is before a tribunal, the tribunal shall file its findings and recommendations with the local board within five days of the conclusion of the hearing, and the local board shall render its decision thereon within ten days after the receipt of the transcript. Appeals may be taken to the state board in

accordance with Code Section 20-2-1160, as now or hereafter amended, and the rules and regulations of the state board governing appeals.

**(g) Superintendent's power to relieve from duty temporarily.**

The superintendent of a local school system may temporarily relieve from duty any teacher, principal, or other employee having a contract for a definite term for any reason specified in subsection (a) of this Code section, pending hearing by the local board in those cases where the charges are of such seriousness or other circumstances exist which indicate that such teacher or employee could not be permitted to continue to perform his or her duties pending hearing without danger of disruption or other serious harm to the school, its mission, pupils, or personnel. In any such case, the superintendent shall notify the teacher or employee in writing of such action, which notice shall state the grounds thereof and shall otherwise comply with the requirements of the notice set forth in subsection (b) of this Code section. Such action by the superintendent shall not extend for a period in excess of ten working days, and during such period it shall be the duty of the local board to conduct a hearing on the charges in the same manner provided for in subsections (e) and (f) of this Code section, except that notice of the time and place of hearing shall be given at least three days prior to the hearing. During the period that the teacher or other employee is relieved from duty prior to the decision of the local board, the teacher or employee shall be paid all sums to which he or she is otherwise entitled. If the hearing is delayed after the ten-day period as set out in this subsection at the request of the teacher or employee, then the teacher or employee shall not be paid beyond the ten-day period unless he or she is reinstated by the local board, in which case he or she shall receive all compensation to which he or she is otherwise entitled. (Ga. L. 1975, p. 360, § 1; Ga. L. 1986, p. 300, § 1; Ga. L. 1987, p. 3, § 20; Ga. L. 1994, p. 527, § 1; Ga. L. 1996, p. 6, § 20; Ga. L. 1998, p. 750, § 2; Ga. L. 2000, p. 1589, § 3; Ga. L. 2012, p. 890, § 1/SB 153.)

**The 2012 amendment**, effective July 1, 2012, in subsection (a), twice substituted "administrator" for "principal" and in paragraph (a)(6), added "and due to no fault or performance issue of the teacher, administrator, or other employee" to the end of the first sentence and added the second sentence; in subsection (b), three times inserted "or her", and substituted "administrator" for "principal" near the beginning; in subsection (d), substituted "administrator" for "principal" near the beginning, substituted "chairperson" for "chairman", and substituted "vice chairperson" for "vice-chairman" near the end; in paragraphs (e)(3) and (e)(4), substi-

tuted "chairperson" for "chairman"; inserted "that" following "however," in paragraph (e)(4); and, in subsection (g), inserted "or her" near the beginning, inserted a comma following "period" near the middle, and four times inserted "or she" near the end.

**Editor's notes.** — Code Section 20-2-940 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Ga. L. 1998, p. 750, § 11, not codified by the General Assembly, provides that all cases pending before the Professional Practices Commission on June 30, 1998,



shall be transferred to the Professional Standards Commission, Part 10, Ch. 2, T. 10.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, makes subsection (c) of this Code section applicable with respect to notices delivered on or after July 1, 2000.

**Law reviews.** — For survey of 1985 Eleventh Circuit cases on civil constitutional law, see 37 Mercer L. Rev. 1253

(1986). For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986). For survey of 1987 Eleventh Circuit cases on administrative law, see 39 Mercer L. Rev. 1057 (1988). For survey article on education law for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 237 (2003). For annual survey of law on labor and employment law, see 62 Mercer L. Rev. 181 (2010).

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION

#### CONSTITUTIONALITY

#### GROUND FOR TERMINATION OR SUSPENSION

### General Consideration

**Editor's note.** — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 32-913, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Significance of tenure** is that a tenured teacher's contract may be nonrenewed only for one of the reasons specified in O.C.G.A. § 20-2-940. The effect of resignation upon a tenured teacher is immediate loss of tenure rights. *Oates v. Coffee County Bd. of Educ.*, 198 Ga. App. 77, 400 S.E.2d 355 (1990), cert. denied, 198 Ga. App. 898, 400 S.E.2d 355 (1991).

**Property interest in continued employment.** — Georgia law creates a property interest in continued employment for tenured teachers that may not be denied without granting certain substantive and procedural due process rights. *Hatcher v. Board of Pub. Educ. & Orphanage*, 809 F.2d 1546 (11th Cir. 1987).

**Teacher status.** — Public school employee was deemed to be a teacher for purposes of Georgia's Fair Dismissal Law, O.C.G.A. § 20-2-940 et seq., since the employee was an administrator tenured prior to April 7, 1995. *Siler v. Hancock County Bd. of Educ.*, 510 F. Supp. 2d 1362 (M.D. Ga. 2007).

**Teacher who becomes "permanently elected," may only be removed**

**for cause.** — When a teacher, having been employed for more than five years as a principal of a school, became "permanently elected", the teacher could not be suspended or removed except for one of the causes specified and the teacher had the right to defend the position in a hearing before the board. *County Bd. of Educ. v. Young*, 187 Ga. 644, 1 S.E.2d 739 (1939) (decided under former Code 1933, § 32-913).

**Transfer to another school without cause or hearing allowed, provided no salary reduction.** — Board of Education had the right merely to transfer a teacher from a position of principal to that of a teacher in another school without assigning a cause or a hearing, provided the board did not act merely arbitrarily and exercised the board's judgment as to what was best for the school system, and provided the board did not accompany the demotion with a reduction in salary. *County Bd. of Educ. v. Young*, 187 Ga. 644, 1 S.E.2d 739 (1939) (decided under former Code 1933, § 32-913).

Public school employee's federal procedural due process claims failed because the employee, when transferred from a principal position to a lead teacher position, was not demoted as defined in O.C.G.A. § 20-2-943(a)(2)(C) since the employee did not receive a lesser salary or less prestige, and as such, the employee was not entitled to the procedural protections outlined in O.C.G.A. §§ 20-2-940(b)

through (f) and 20-2-942(b)(2), which the employee had been denied, because the employee lacked a property interest under Georgia law. *Siler v. Hancock County Bd. of Educ.*, 510 F. Supp. 2d 1362 (M.D. Ga. 2007).

Argument that a former school principal's due process rights under the Fourteenth Amendment were violated when a school district transferred the principal without a hearing was without merit. While O.C.G.A. §§ 20-2-940(b)-(f) and 20-2-942(b)(2) provided that an educational employee had a right to a hearing when facing a demotion, to qualify as a demotion, O.C.G.A. § 20-2-943(a)(2)(C) required that the subsequent position be accompanied by a decrease in salary, and the former principal was unable to demonstrate that there was a decrease in salary. *Siler v. Hancock County Bd. of Educ.*, No. 07-11926, 2008 U.S. App. LEXIS 7948 (11th Cir. Apr. 9, 2008) (Unpublished).

**Assignment of a visually impaired teacher** to a school more distant than the one to which the teacher had been assigned previously did not violate the Georgia Equal Employment for the Handicapped Code because the teacher was not treated any differently from any able-bodied employee; therefore, the teacher's termination for refusal to accept a reassignment was proper. *Allen v. Bergman*, 198 Ga. App. 57, 400 S.E.2d 347 (1990), cert. denied, 198 Ga. App. 897, 400 S.E.2d 347 (1991).

**Notification of termination.** — O.C.G.A. § 20-2-940 was enacted to make certain that public school teachers would receive timely notification of termination of the teachers' employment well in advance of the following school year. *Andrews v. Howard*, 249 Ga. 539, 291 S.E.2d 541 (1982).

Although termination notice was erroneously addressed, when mail carrier corrected the address, attempted delivery, left notice of attempted delivery and returned certified letter to post office, O.C.G.A. § 20-2-940 was substantially complied with. *Andrews v. Howard*, 249 Ga. 539, 291 S.E.2d 541 (1982).

Even though the board of education failed to provide a school employee with

pretermination notice, the employee could not maintain a claim for damages for procedural due process deprivation under 42 U.S.C. § 1983 since the employee could have sued the board in state court to enforce that right. *Merritt v. Brantley*, 936 F. Supp. 988 (S.D. Ga. 1996).

**Failure to renew contract and application of law.** — Since a county board of education did not terminate or suspend the complainant teacher during the teacher's contract year, but simply decided that the board was not going to renew the teacher's contract for the upcoming year, O.C.G.A. § 20-2-211(b), and not O.C.G.A. § 20-2-940, applied. *Baker v. McIntosh County Sch. Dist.*, 264 Ga. App. 509, 591 S.E.2d 362 (2003).

**No subpoena power in termination cases.** — There is no statutory authority for the Professional Practices Commission (sitting for a local school board) to issue subpoenas for discovery purposes in teacher termination cases. *Lansford v. Cook*, 252 Ga. 414, 314 S.E.2d 103 (1984).

**Discovery.** — Work product doctrine could not be used to escape discovery of records and documents relating to the investigation or disciplinary action taken by the board of public education with regard to the incident which gave rise to the complaint. *Chaney ex rel. Guillian v. Slack*, 99 F.R.D. 531 (S.D. Ga. 1983).

**Applicability of Superior Court Rules.** — Rule 25 of the Uniform Superior Court Rules, regarding removal, does not apply to school board proceedings under O.C.G.A. §§ 20-2-940 and 20-2-1160 because that rule addresses pre-hearing matters. *Johnson v. Pulaski County Bd. of Educ.*, 231 Ga. App. 576, 499 S.E.2d 345 (1998).

**Review.** — School appeals are governed by the procedures set out in O.C.G.A. §§ 20-2-940 and 20-2-1160 and do not fall within the Georgia Administrative Procedure Act, O.C.G.A. Ch. 13, T. 50. *Johnson v. Pulaski County Bd. of Educ.*, 231 Ga. App. 576, 499 S.E.2d 345 (1998).

Tenured teacher was not required to appeal to the state board of education; the Atlanta Public Schools' failure to grant the teacher a hearing on the nonrenewal of the teacher's teaching contract after a hearing was requested, made such an ap-



### General Consideration (Cont'd)

peal futile, since such appeals were confined to record and presupposed a hearing was held by the local board of education. *Atlanta Pub. Schs v. Diamond*, 261 Ga. App. 641, 583 S.E.2d 500 (2003).

**Cited in** *Davis v. Griffin-Spalding County Bd. of Educ.*, 445 F. Supp. 1048 (N.D. Ga. 1975); *Armistead v. Cherokee County Sch. Dist.*, 144 Ga. App. 178, 241 S.E.2d 19 (1977); *Dougherty County v. White*, 439 U.S. 32, 99 S. Ct. 368, 58 L. Ed. 2d 269 (1978); *Willingham v. Carter*, 447 F. Supp. 301 (S.D. Ga. 1978); *Fuller v. Williams*, 150 Ga. App. 730, 258 S.E.2d 538 (1979); *Rockdale County Sch. Dist. v. Weil*, 245 Ga. 730, 266 S.E.2d 919 (1980); *Sharpley v. Hall County Bd. of Educ.*, 251 Ga. 54, 303 S.E.2d 9 (1983); *Saxby v. Bibb County Bd. of Educ.*, 173 Ga. App. 633, 327 S.E.2d 494 (1985); *Chavis v. Clayton County Sch. Dist.*, 300 F.3d 1288 (11th Cir. 2002).

### Constitutionality

**Fair Dismissal Act constitutional.** — Fair Dismissal Act of Georgia, O.C.G.A. § 20-2-940 et seq., both on the Act's face and as applied, not only met, but exceeded, the minimum due process standard in a situation when a teacher who was to be terminated for cause opposed termination. *Holley v. Seminole County Sch. Dist.*, 755 F.2d 1492 (11th Cir. 1985).

**Due process in failing to renew.** — County school board and school administrators did not violate standards of federal due process in failing to renew a school teacher's contract since the board and administrators informed the teacher that the reasons for their actions were the teacher's insubordination and willful neglect of duty, in addition to "other good and sufficient cause." *Suber v. Bulloch County Bd. of Educ.*, 722 F. Supp. 736 (S.D. Ga. 1989).

**Recusal was required for due process.** — President of the school board, who recommended the principal's removal from that capacity, should have been recused from participation in the school board's hearing on the matter and the board's failure to recuse the president denied the principal due process. *Johnson*

*v. Pulaski County Bd. of Educ.*, 231 Ga. App. 576, 499 S.E.2d 345 (1998).

**Hiring replacement to assume duties of provisionally nonrenewed or terminated teacher constitutional.** — Mere fact that a replacement had been hired to assume the duties of a provisionally nonrenewed or terminated teacher prior to that teacher's hearing, when the school district had retained by contract the right to rearrange the teaching duties of the district's teachers, did not as a matter of law violate due process. *Holley v. Seminole County Sch. Dist.*, 755 F.2d 1492 (11th Cir. 1985).

**Discharged teacher asserting first amendment right entitled to de novo federal hearing.** — Discharged or nonrenewed teacher asserting a first amendment "protected" right was entitled to a de novo hearing in federal court regardless of whether that teacher resorted to an administrative hearing or whether such hearing purported to decide the issue, and the teacher should have been allowed to present evidence in the court that other teachers had engaged in similar "improper" conduct, such as that which allegedly justifiably caused the teacher's discharge, known to school personnel and the board, and those teachers were not disciplined, raising an inference that the teacher in question was disciplined for reasons other than "improper" conduct. *Holley v. Seminole County Sch. Dist.*, 755 F.2d 1492 (11th Cir. 1985).

**Due process requirements.** — In an action in which an employee was terminated for failing to obtain an educator's certificate, waived a rehearing, and the employee was paid a full salary through the date of a hearing, the employee's due process rights under the Fair Dismissal Act, O.C.G.A. § 20-2-940, were not violated; consequently, the school board was properly granted summary judgment. *Oliver v. Lee County Sch. Dist.*, 270 Ga. App. 61, 606 S.E.2d 88 (2004).

Former tenured teacher failed to state a claim of a procedural due process violation under 42 U.S.C. § 1983 in the nonrenewal of a teaching contract because the teacher failed to utilize available state remedies under O.C.G.A. §§ 9-6-20, 20-2-940, 20-2-942(b), and 20-2-1160(a) through pe-



tioning the board of education for a hearing or seeking mandamus relief. *Mason v. Clayton County Bd. of Educ.*, No. 08-16131, 2009 U.S. App. LEXIS 10491 (11th Cir. May 19, 2009) (Unpublished).

**Grounds for termination or suspension not vague or overbroad.** — Fact that O.C.G.A. § 20-2-940, providing grounds for terminating or suspending teachers' or principals' contracts, could be construed as excluding some crimes as a basis for nonrenewal but not others does not in and of itself render the statute vague or overbroad, so as to deprive plaintiff whose contract was not renewed due to plaintiff's conviction for submitting false documents to the Internal Revenue Service of due process; the statute clearly establishes the class of people covered and provides sufficient notice of what conduct is proscribed and there was no question that plaintiff came within the sweep of the law. *Logan v. Warren County Bd. of Educ.*, 549 F. Supp. 145 (S.D. Ga. 1982).

### **Grounds for Termination or Suspension**

**Cancellation of program warrants termination.** — When the elimination of the system of centrally administering support services and security constituted the cancellation of an operational program under O.C.G.A. § 20-2-940(a)(6), the discontinuation of the position of director warranted the termination of the employee's contract. *Curry v. Dawson County Bd. of Educ.*, 212 Ga. App. 827, 442 S.E.2d 919 (1994).

**Nonrenewal of tenured teacher's contract prohibited except for cause.** — At least implicitly, Ga. L. 1975, p. 360, § 3 prohibits the nonrenewal of a tenured teacher's contract except for cause, such as is specified in this section, and provides that a tenured teacher has a protectable property interest in his or her job. *LaPier v. Holliman*, 514 F. Supp. 692 (N.D. Ga. 1980) (see O.C.G.A. § 20-2-940).

**"Willful neglect of duty"** under paragraph (a)(3) of O.C.G.A. § 20-2-940 is a flagrant act or omission, an intentional violation of a known rule or policy, or a continuous course of reprehensible conduct. Under either of these interpretations, "willfulness" requires a showing of

more than mere negligence. *Terry v. Houston County Bd. of Educ.*, 178 Ga. App. 296, 342 S.E.2d 774 (1986).

**It is not necessary to establish a nexus between a conviction and ability to teach to justify discharge or nonrenewal** when the conviction involves moral turpitude. *Logan v. Warren County Bd. of Educ.*, 549 F. Supp. 145 (S.D. Ga. 1982).

**Submission of false tax document grounds for dismissal or nonrenewal.**

— Submission of false documents to IRS is an offense involving moral turpitude under Georgia law, and is sufficient ground for dismissal or nonrenewal of a contract under the provisions of O.C.G.A. § 20-2-940 et seq. *Logan v. Warren County Bd. of Educ.*, 549 F. Supp. 145 (S.D. Ga. 1982).

**Evidence supporting finding of incompetence, insubordination, and/or willful neglect basis for contract nonrenewal.** — Competent and probative evidence before a county board which supports a finding of incompetence, insubordination, and/or willful neglect of duties is a sufficient basis for the nonrenewal of a tenured teacher's contract. *Ransom v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978).

**Proven fact of possession of dangerous drugs is evidence from which "immorality" may be inferred**, even in the absence of criminal purpose or intent. *Dominy v. Mays*, 150 Ga. App. 187, 257 S.E.2d 317 (1979).

**Physical education teacher who unintentionally showed two classes an "R-rated" movie was not guilty of "willful neglect of duty."** *Terry v. Houston County Bd. of Educ.*, 178 Ga. App. 296, 342 S.E.2d 774 (1986).

**Evidence sufficient to support termination.** — Evidence that high school principal discussed sexual and personal matters with teachers at school in an unprofessional manner, made derogatory remarks to teachers about both teachers and students (and that such unprofessional discussions and comments have impeded effective communication between that principal and certain teachers), and has intimidated certain teachers by remarks with sexual connotations concern-

### Grounds for Termination or Suspension (Cont'd)

ing other teachers and students was sufficient to support the school board's termination of the principal's employment. *Rabon v. Bryan County Bd. of Educ.*, 173 Ga. App. 507, 326 S.E.2d 577, cert. denied, 474 U.S. 855, 106 S. Ct. 160, 88 L. Ed. 2d 133 (1985).

There was substantial evidence — in the form of testimony by school personnel that a teacher repeatedly left school grounds without permission, failed to attend classes and lunchroom duties to which the teacher was assigned, threatened students with academic failure if the students did not play football, and directed profanity at students — to support the school board's finding of "cause" not to renew that teacher's contract. *Holley v. Seminole County Sch. Dist.*, 755 F.2d 1492 (11th Cir. 1985).

Superior court erred in reversing a local school board's decision to terminate a teacher for insubordination and willful

neglect of duty pursuant to O.C.G.A. § 20-2-940(a) because the decision was supported by evidence that the teacher made inappropriate comments about special education students, among other evidence. The "any evidence" standard of O.C.G.A. § 20-2-1160(e) applied. *Chattooga County Bd. of Educ. v. Searels*, 302 Ga. App. 731, 691 S.E.2d 629 (2010).

### Insufficient evidence of insubordination to support termination.

— School board erroneously terminated the employment of a teacher, who was on approved long-term disability leave, on grounds of insubordination and for disobeying a board directive, as the teacher's attendance at a planning meeting at the workplace was insufficient to amount to the teacher's return to full teaching duties, and the evidence failed to show that the teacher ever sought to be restored to full teaching duties as of the date of the meeting. *Brawner v. Marietta City Bd. of Educ.*, 285 Ga. App. 10, 646 S.E.2d 89 (2007), cert. denied, 2007 Ga. LEXIS 543 (Ga. 2007).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, § 223 et seq. 68 Am. Jur. 2d, Schools, §§ 147 et seq., 219 et seq.

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 294, 374, 378, 390 et seq.

**ALR.** — Temporary inability of teacher without fault of school authorities to perform duty as justifying termination of contract or removal, 72 ALR 283.

Marriage of teacher as ground of removal or discharge, 118 ALR 1092.

Candidacy for or incumbency of public office or other political activity by teacher or other school employee as ground for dismissal or compulsory leave of absence, 136 ALR 1154.

Assertion of immunity as ground for removing or discharging public officer or employee, 44 ALR2d 789.

Sufficiency of teacher's request for hearing, under statute requiring hearing on request before discharge, 89 ALR2d 1018.

Test of moral character or fitness as requisite to issuance of teacher's license or certificate, 96 ALR2d 536.

Revocation of teacher's certificate for moral unfitness, 97 ALR2d 827.

Right to dismiss public school teacher on ground that services are no longer needed, 100 ALR2d 1141.

What constitutes "incompetency" or "inefficiency" as a ground for dismissal or demotion of public school teacher, 4 ALR3d 1090.

Use of illegal drugs as ground for dismissal of teacher, or denial or cancellation of teacher's certificate, 47 ALR3d 754.

Dismissal of, or disciplinary action against, public school teacher for violation of regulation as to dress or personal appearance of teachers, 58 ALR3d 1227.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate, 78 ALR3d 19.

What constitutes "insubordination" as ground for dismissal of public school teachers, 78 ALR3d 83.

Dismissal of public school teacher because of unauthorized absence or tardiness, 78 ALR3d 117.

Termination of teacher's tenure status by resignation, 9 ALR4th 729.

Public school teacher's self-defense, or defense of another, as justification, in dismissal proceedings, for use or threat of use of force against student, 37 ALR4th 842.

Sufficiency of notice of intention to discharge or not to rehire teacher, under statutes requiring such notice, 52 ALR4th 301.

**20-2-940. (Effective January 1, 2013. See note.) Grounds and procedure for terminating or suspending contract of employment.**

(a) **Grounds for termination or suspension.** Except as otherwise provided in this subsection, the contract of employment of a teacher, administrator, or other employee having a contract for a definite term may be terminated or suspended for the following reasons:

- (1) Incompetency;
- (2) Insubordination;
- (3) Willful neglect of duties;
- (4) Immorality;

(5) Inciting, encouraging, or counseling students to violate any valid state law, municipal ordinance, or policy or rule of the local board of education;

(6) To reduce staff due to loss of students or cancellation of programs and due to no fault or performance issue of the teacher, administrator, or other employee. In the event that a teacher, administrator, or other employee is terminated or suspended pursuant to this paragraph, the local unit of administration shall specify in writing to such teacher, administrator, or other employee that the termination or suspension is due to no fault or performance issues of such teacher, administrator, or other employee;

(7) Failure to secure and maintain necessary educational training;  
or

- (8) Any other good and sufficient cause.

A teacher, administrator, or other employee having a contract of employment for a definite term shall not have such contract terminated or suspended for refusal to alter a grade or grade report if the request to alter a grade or grade report was made without good and sufficient cause.

(b) **Notice.** Before the discharge or suspension of a teacher, administrator, or other employee having a contract of employment for a definite term, written notice of the charges shall be given at least ten days before the date set for hearing and shall state:



(1) The cause or causes for his or her discharge, suspension, or demotion in sufficient detail to enable him or her fairly to show any error that may exist therein;

(2) The names of the known witnesses and a concise summary of the evidence to be used against him or her. The names of new witnesses shall be given as soon as practicable;

(3) The time and place where the hearing thereon will be held; and

(4) That the charged teacher or other person, upon request, shall be furnished with compulsory process or subpoena legally requiring the attendance of witnesses and the production of documents and other papers as provided by law.

(c) **Service.** All notices required by this part relating to suspension from duty shall be served either personally or by certified mail or statutory overnight delivery. All notices required by this part relating to demotion, termination, nonrenewal of contract, or reprimand shall be served by certified mail or statutory overnight delivery. Service shall be deemed to be perfected when the notice is deposited in the United States mail addressed to the last known address of the addressee with sufficient postage affixed to the envelope.

(d) (Effective January 1, 2013. See note.) **Counsel; testimony.** Any teacher, administrator, or other person against whom such charges listed in subsection (a) of this Code section have been brought shall be entitled to be represented by counsel and, upon request, shall be entitled to have subpoenas or other compulsory process issued for attendance of witnesses and the production of documents and other evidence. Such subpoenas and compulsory process shall be issued in the name of the local board and shall be signed by the chairperson or vice chairperson of the local board. In all other respects, such subpoenas and other compulsory process shall be subject to Article 2 of Chapter 13 of Title 24.

(e) **Hearing.**

(1) The hearing shall be conducted before the local board, or the local board may designate a tribunal to consist of not less than three nor more than five impartial persons possessing academic expertise to conduct the hearing and submit its findings and recommendations to the local board for its decision thereon.

(2) The hearing shall be reported at the local board's expense. If the matter is heard by a tribunal, the transcript shall be prepared at the expense of the local board and an original and two copies shall be filed in the office of the superintendent. If the hearing is before the local board, the transcript need not be typed unless an appeal is taken to the State Board of Education, in which event typing of the

transcript shall be paid for by the appellant. In the event of an appeal to the state board, the original shall be transmitted to the state board as required by its rules.

(3) Oath or affirmation shall be administered to all witnesses by the chairperson, any member of the local board, or by the local board attorney. Such oath shall be as follows:

“You do solemnly swear (or affirm) that the evidence shall be the truth, the whole truth, and nothing but the truth. So help you God.”

(4) All questions relating to admissibility of evidence or other legal matters shall be decided by the chairperson or presiding officer, subject to the right of either party to appeal to the full local board or hearing tribunal, as the case may be; provided, however, that the parties by agreement may stipulate that some disinterested member of the State Bar of Georgia shall decide all questions of evidence and other legal issues arising before the local board or tribunal. In all hearings, the burden of proof shall be on the school system, and it shall have the right to open and to conclude. Except as otherwise provided in this subsection, the same rules governing nonjury trials in the superior court shall prevail.

(f) **Decision; appeals.** The local board shall render its decision at the hearing or within five days thereafter. Where the hearing is before a tribunal, the tribunal shall file its findings and recommendations with the local board within five days of the conclusion of the hearing, and the local board shall render its decision thereon within ten days after the receipt of the transcript. Appeals may be taken to the state board in accordance with Code Section 20-2-1160, as now or hereafter amended, and the rules and regulations of the state board governing appeals.

(g) **Superintendent's power to relieve from duty temporarily.** The superintendent of a local school system may temporarily relieve from duty any teacher, principal, or other employee having a contract for a definite term for any reason specified in subsection (a) of this Code section, pending hearing by the local board in those cases where the charges are of such seriousness or other circumstances exist which indicate that such teacher or employee could not be permitted to continue to perform his or her duties pending hearing without danger of disruption or other serious harm to the school, its mission, pupils, or personnel. In any such case, the superintendent shall notify the teacher or employee in writing of such action, which notice shall state the grounds thereof and shall otherwise comply with the requirements of the notice set forth in subsection (b) of this Code section. Such action by the superintendent shall not extend for a period in excess of ten working days, and during such period, it shall be the duty of the local board to conduct a hearing on the charges in the same manner provided

for in subsections (e) and (f) of this Code section, except that notice of the time and place of hearing shall be given at least three days prior to the hearing. During the period that the teacher or other employee is relieved from duty prior to the decision of the local board, the teacher or employee shall be paid all sums to which he or she is otherwise entitled. If the hearing is delayed after the ten-day period as set out in this subsection at the request of the teacher or employee, then the teacher or employee shall not be paid beyond the ten-day period unless he or she is reinstated by the local board, in which case he or she shall receive all compensation to which he or she is otherwise entitled. (Ga. L. 1975, p. 360, § 1; Ga. L. 1986, p. 300, § 1; Ga. L. 1987, p. 3, § 20; Ga. L. 1994, p. 527, § 1; Ga. L. 1996, p. 6, § 20; Ga. L. 1998, p. 750, § 2; Ga. L. 2000, p. 1589, § 3; Ga. L. 2011, p. 99, § 36/HB 24; Ga. L. 2012, p. 890, § 1/SB 153.)

**The 2011 amendment**, effective January 1, 2013, in subsection (d), substituted “chairperson or vice chairperson” for “chairman or vice-chairman” near the end of the second sentence, and substituted “subject to Article 2 of Chapter 13 of Title 24” for “subject to Part 1 of Article 2 of Chapter 10 of Title 24, as now or hereafter amended” at the end of the last sentence. See editor’s note for applicability.

**The 2012 amendment**, effective July 1, 2012, in subsection (a), twice substituted “administrator” for “principal” and in paragraph (a)(6), added “and due to no fault or performance issue of the teacher, administrator, or other employee” to the end of the first sentence and added the second sentence; in subsection (b), three times inserted “or her”, and substituted “administrator” for “principal” near the beginning; in subsection (d), substituted “administrator” for “principal” near the beginning, substituted “chairperson” for “chairman”, and substituted “vice chairperson” for “vice-chairman” near the end; in paragraphs (e)(3) and (e)(4), substituted “chairperson” for “chairman”; inserted “that” following “however,” in paragraph (e)(4); and, in subsection (g), inserted “or her” near the beginning, inserted a comma following “period” near the middle, and four times inserted “or she” near the end.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2011, “subject to Article 2” was substituted for “subject Article 2” in the last sentence of subsection (d).

Ga. L. 2012, p. 890, § 1/SB 253, amended subsection (d) of this Code section and in so doing omitted without expressing an intent to repeal or modify the amendment made to that subsection made by Ga. L. 2011, p. 99, § 36/HB 24. The two amendments were not irreconcilably conflicting, and the amendment to subsection (d) of this Code section made by Ga. L. 2011, p. 99, § 36/HB 24, was treated as not having been repealed by Ga. L. 2012, p. 890, § 1/SB 253. See *Reeves v. Gay*, 92 Ga. 309 (1893).

**Editor’s notes.** — Code Section 20-2-940 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that the 2011 amendment to this Code section shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

**Law reviews.** — For article, “Evidence,” see 27 Ga. St. U. L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 1 (2011).



**20-2-941. Notice of nonrenewal of contract of employment for ensuing year.**

Reserved. Repealed by Ga. L. 1985, p. 1657, § 2, effective July 1, 1986.

**Editor's notes.** — This Code section was based on Ga. L. 1975, p. 360, § 2.

**20-2-942. Procedure for nonrenewal after acceptance by teacher of school year contract for fourth consecutive school year; procedure for nonrenewal by another local board of education; professional certificated personnel; rights of school administrators; tenure.**

(a) As used in this Code section, the term:

(1) "Local board of education" or "local board" means a county or independent board of education, a board of education of an area school system, or any agent with the authority to act on behalf of any such board.

(1.1) "School administrator" means any professional school employee certificated by the Professional Standards Commission who is required to hold a leadership certificate and is assigned to a leadership position pursuant to rules of the State Board of Education, Department of Education, Professional Standards Commission, or requirements of local policy or job description.

(2) "School year" means a period of at least 180 school days, or the equivalent thereof as determined in accordance with State Board of Education guidelines, beginning in or about September and ending in or about June.

(3) "School year contract" means a contract of full-time employment between a teacher and a local board of education covering a full school year. A contract of employment for a portion of a school year shall not be counted as a school year contract, nor shall contracts of employment for portions of a school year be cumulated and treated as a school year contract. A contract of employment for any time outside a school year shall not be counted as a school year contract, nor shall contracts of employment for time outside a school year be cumulated and treated as a school year contract. A school year contract is deemed included within a contract of full-time employment between a teacher and a local board of education covering a full calendar or fiscal year.

(4) "Teacher" means any professional school employee certificated by the Professional Standards Commission, but not including school administrators.

(b)(1) A teacher who accepts a school year contract for the fourth consecutive school year from the same local board of education may be demoted or the teacher's contract may not be renewed only for those reasons set forth in subsection (a) of Code Section 20-2-940.

(2) In order to demote or fail to renew the contract of a teacher who accepts a school year contract for the fourth or subsequent consecutive school year from the same local board of education, the teacher must be given written notice of the intention to demote or not renew the contract of the teacher. Such notice shall be given by certified mail or statutory overnight delivery as provided in subsection (c) of Code Section 20-2-940. Such notice shall contain a conspicuous statement in substantially the following form:

You have the right to certain procedural safeguards before you can be demoted or dismissed. These safeguards include the right to notice of the reasons for the action against you and the right to a hearing. If you desire these rights you must send to the school superintendent by certified mail or statutory overnight delivery a statement that you wish to have a hearing; and such statement must be mailed to the school superintendent within 20 days after this notice was mailed to you. Your rights are governed by subsection (b) of Code Section 20-2-211, Code Section 20-2-940, and Code Sections 20-2-942 through 20-2-947, and a copy of this law is enclosed.

A copy of subsection (b) of Code Section 20-2-211, Code Section 20-2-940, this Code section, and Code Sections 20-2-943 through 20-2-947 shall be enclosed with the notice. A teacher who is so notified that he or she is to be demoted or that his or her contract will not be renewed has the right to the procedures set forth in subsections (b) through (f) of Code Section 20-2-940 before the intended action is taken. A teacher who has the right to these procedures must serve written notice on the superintendent of the local board employing the teacher within 20 days of the day the notice of the intended action is served that he or she requests a hearing. In order to be effective, such written notice that the teacher requests implementation of such procedures must be served by certified mail or statutory overnight delivery as provided in subsection (c) of Code Section 20-2-940. Within 14 days of service of the request to implement the procedures, the local board must furnish the teacher a notice that complies with the requirements of subsection (b) of Code Section 20-2-940.

(3) A teacher is deemed to have accepted a fourth consecutive school year contract if, while the teacher is serving under the third consecutive school year contract, the local board does not serve notice on the teacher by April 15 that it intends not to renew the teacher's contract for the ensuing school year, and the teacher does not serve

notice in writing on the local board of education by May 1 of the third consecutive school year that he or she does not accept the fourth consecutive school year contract.

(4) A teacher who has satisfied the conditions set forth in paragraph (1) of this subsection who is subsequently employed by another local board of education and who accepts a second consecutive school year contract from the local board at which the teacher is subsequently employed may be demoted or the teacher's contract may not be renewed only for those reasons set forth in subsection (a) of Code Section 20-2-940. The provisions set forth in paragraph (2) of this subsection shall likewise apply to such a teacher.

(5) A teacher is deemed to have accepted a second consecutive school year contract if, while the teacher is serving under the first school year contract, the local board does not serve notice on the teacher by April 15 that it intends not to renew the teacher's contract for the ensuing school year, and the teacher does not serve notice in writing on the local board of education by May 1 of the first school year that he or she does not accept the second consecutive school year contract.

(6) Local boards shall make contract offers available to teachers for a minimum ten-day review period. A teacher accepts the contract by signing and returning it any time during the ten-day period.

(7)(A) Professional certificated personnel employed by a county or independent local school system that becomes consolidated with or merged into another county or independent local school system as provided in Article 8 of this chapter or otherwise shall retain their employment, except as provided in subparagraph (B) of this paragraph, in the newly created, or surviving, school system. Said professional certificated personnel shall retain and carry over all the rights already accrued and earned in the professional certificated personnel's prior school system and as set forth in this paragraph.

(B) Any reductions in staff due to loss of students or cancellation of programs in the newly created, or surviving, school system necessitated by the consolidation or merger shall be made first in preference of retaining professional certificated personnel on the basis of uniformly applied criteria set forth in local school board policies of the newly created, or surviving, school system.

(c)(1) A person who first becomes a school administrator on or after April 7, 1995, shall not acquire any rights under this Code section to continued employment with respect to any position of school administrator. A school administrator who had acquired any rights to continued employment under this Code section prior to April 7, 1995, shall retain such rights:



(A) In that administrative position which such administrator held immediately prior to such date; and

(B) In any other administrative position to which such administrator has been involuntarily transferred or assigned,

and only in such positions shall such administrator be deemed to be a teacher for the purpose of retaining those rights to continued employment in such administrative positions.

(2) A teacher who had acquired any rights to continued employment under this Code section prior to April 7, 1995, and who is or becomes a school administrator without any break in employment with the local board for which the person had been a teacher shall retain those rights under this Code section to continued employment in the position as teacher with such local board.

(2.1) A local board of education may enter into an employment contract with a school administrator for a term not to exceed three years. During the term of any such contract, that school administrator may not be demoted except as provided in the other subsections of this Code section and may not be terminated or suspended except as provided in Code Section 20-2-940, but the school administrator shall have no right to renewal of such contract. The rights provided under such contracts by this paragraph shall be in addition to any rights which a school administrator may otherwise have under the other provisions of this subsection.

(3) Nothing in this subsection shall affect positions which, prior to April 7, 1995, had no rights to continued employment under this Code section, including coach, athletic director, finance officer, comptroller, business manager, nurse, department head or chairperson, and similar positions. Nothing in this subsection shall impair the rights of teachers or school administrators with respect to their employment under annual contracts, including but not limited to those rights under Code Section 20-2-940.

(4) Notwithstanding the other provisions of this subsection, a local board of education may, as part of its personnel policies, adopt or modify a tenure policy which may include the same policies and procedures for the nonrenewal of contracts for any class or category of school administrators that exist for the nonrenewal of contracts for teachers as set forth in this Code section. Before any adoption or modification of a tenure policy, the local board shall hold a public hearing after at least 30 days' notice published in the local legal organ.

(d) A person who first became a teacher on or after July 1, 2000, shall acquire rights under this Code section to continued employment as a

teacher. A teacher who had acquired any rights to continued employment under this Code section prior to July 1, 2000, shall retain such rights. (Ga. L. 1975, p. 360, § 3; Ga. L. 1982, p. 2188, §§ 1, 2; Ga. L. 1983, p. 3, §§ 16, 53; Ga. L. 1986, p. 300, § 2; Ga. L. 1987, p. 3, § 20; Ga. L. 1987, p. 1018, § 1; Ga. L. 1991, p. 1546, § 10; Ga. L. 1995, p. 304, §§ 1-3; Ga. L. 2000, p. 618, § 72; Ga. L. 2000, p. 1589, § 3; Ga. L. 2003, p. 896, § 2; Ga. L. 2009, p. 638, § 5/HB 193.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1986, a comma was inserted following “effective” in the next-to-last sentence of paragraph (b)(2).

Pursuant to Code Section 28-9-5, in 1995, in subsection (c), “April 7, 1995,” was substituted for “the date this subsection first becomes effective” twice in paragraph (c)(1) and in paragraphs (c)(2) and (c)(3).

Pursuant to Code Section 28-9-5, in 2003, “and Code Section 20-2-941” was deleted following “this Code section” near the end of the first sentence in subsection (d).

**Editor’s notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly,

provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the Act is applicable with respect to notices delivered on or after July 1, 2000.

Ga. L. 2003, p. 896, § 2, which amended this Code section, purported to amend Code Section 20-2-940 but actually amended Code Section 20-2-942.

**Law reviews.** — For survey article on education law for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 237 (2003). For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

## JUDICIAL DECISIONS

**Editor’s note.** — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 32-913, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Construction.** — By the statute’s plain and unambiguous terms, O.C.G.A. § 20-2-942(c)(2) preserves the expectations of a teacher who obtained tenure rights prior to April 7, 1995, and after that date accepted a school administrator position with the same local board of education so long as no break in employment with that board of education occurred in the interim. *Patrick v. Huff*, 296 Ga. App. 343, 674 S.E.2d 398 (2009).

Critical phrase “without any break in employment with the local board for which the person had been a teacher,” when read in the context of the clause preceding that clause in O.C.G.A. § 20-2-942(c)(2), clearly means that there can be no break in employment with the

local board with which a teacher originally obtained tenure rights prior to April 7, 1995. *Patrick v. Huff*, 296 Ga. App. 343, 674 S.E.2d 398 (2009).

**Property interest in continued employment.** — Georgia law creates a property interest in continued employment for tenured teachers that may not be denied without granting certain substantive and procedural due process rights. *Hatcher v. Board of Pub. Educ. & Orphanage*, 809 F.2d 1546 (11th Cir. 1987).

Public school employee’s federal procedural due process claims failed because the employee, when transferred from a principal position to a lead teacher position, was not demoted as defined in O.C.G.A. § 20-2-943(a)(2)(C) since the employee did not receive a lesser salary or less prestige, and as such, the employee was not entitled to the procedural protections outlined in O.C.G.A. §§ 20-2-940(b) through (f) and 20-2-942(b)(2), which the employee had been denied, because the employee lacked a property interest under



Georgia law. *Siler v. Hancock County Bd. of Educ.*, 510 F. Supp. 2d 1362 (M.D. Ga. 2007).

**Significance of tenure** is that a tenured teacher's contract may be nonrenewed only for one of the reasons specified in O.C.G.A. § 20-2-940. The effect of resignation upon a tenured teacher is immediate loss of tenure rights. *Oates v. Coffee County Bd. of Educ.*, 198 Ga. App. 77, 400 S.E.2d 355 (1990), cert. denied, 198 Ga. App. 898, 400 S.E.2d 355 (1991).

Trial court erred in overturning the State Board of Education's decision to reverse the local education board's vote to terminate the teacher as the fact that the teacher had tenure meant that the teacher's employment contract could only be not renewed for the reasons set forth in O.C.G.A. § 20-2-940(a), regarding grounds for teacher dismissal, and the local education board did not show that any of those grounds had occurred in the time since the board offered to renew the teacher's contract. *Moulder v. Bartow County Bd. of Educ.*, 267 Ga. App. 339, 599 S.E.2d 495 (2004).

**Due process when no formal system of tenure.** — There is nothing in U.S. Const., amend. 14 that would restrict due process protections to tenured teachers; when no formal system of tenure exists, due process may be mandated nonetheless when state rules or understandings between the parties support a claim of entitlement to continued employment. *LaPier v. Holliman*, 514 F. Supp. 692 (N.D. Ga. 1980).

**Teacher who becomes "permanently elected" may only be removed for cause.** — When a teacher, having been employed for more than five years as a principal of a school, became "permanently elected," the teacher could not be suspended or removed except for one of the causes specified, and the teacher had the right to defend the position in a hearing before the board. *County Bd. of Educ. v. Young*, 187 Ga. 644, 1 S.E.2d 739 (1939) (decided under former Code 1933, § 32-913).

**Transfer to another school without cause or hearing allowed, provided no salary reduction.** — Board of Education had the right merely to transfer a

teacher from the position of principal to that of a teacher in another school without assigning a cause or a hearing, provided the board did not act merely arbitrarily and exercised the board's judgment as to what was best for the school system, and provided the board did not accompany the demotion with a reduction in salary. *County Bd. of Educ. v. Young*, 187 Ga. 644, 1 S.E.2d 739 (1939) (decided under former Code 1933, § 32-913).

In a case in which a former school principal argued that the former principal's due process rights were violated under the Fourteenth Amendment when a school district transferred the former principal without a hearing, that argument was without merit. While O.C.G.A. §§ 20-2-940(b)-(f) and 20-2-942(b)(2) provided that an educational employee had a right to a hearing when facing a demotion, to qualify as a demotion, O.C.G.A. § 20-2-943(a)(2)(C) provided that the subsequent position must be accompanied by a decrease in salary, and the former principal was unable to demonstrate that there was a decrease in salary. *Siler v. Hancock County Bd. of Educ.*, No. 07-11926, 2008 U.S. App. LEXIS 7948 (11th Cir. Apr. 9, 2008) (Unpublished).

**Break in employment.** — Administrator who had formerly worked as a teacher and as a counselor was not entitled to the procedural protections of the Fair Dismissal Act, O.C.G.A. § 20-2-940 et seq. Because there had been a break in the administrator's employment when the administrator worked in another school district, the administrator did not meet the requirement of O.C.G.A. § 20-2-942(c)(2) that the administrator be continuously employed in the district in which the administrator originally obtained tenure. *Patrick v. Huff*, 296 Ga. App. 343, 674 S.E.2d 398 (2009).

**Constitutional to hire replacement to assume duties of provisionally nonrenewed or terminated teacher.** — Mere fact that a replacement had been hired to assume the duties of a provisionally nonrenewed or terminated teacher prior to that teacher's hearing, when the school district had retained by contract the right to rearrange the teaching duties of the district's teachers, did not as a



matter of law violate due process. *Holley v. Seminole County Sch. Dist.*, 755 F.2d 1492 (11th Cir. 1985).

**Intent of this section** is to require notice and a meaningful hearing when the local board tentatively decides not to renew the contract of a tenured principal or teacher. *Owen v. Long County Bd. of Educ.*, 245 Ga. 647, 266 S.E.2d 461 (1980) (see O.C.G.A. § 20-2-942).

**Due process notice.** — County school board and school administrators did not violate standards of federal due process in failing to renew a school teacher's contract after the board and administrators informed the teacher that the reasons for their actions were the teacher's insubordination and willful neglect of duty, in addition to "other good and sufficient cause." *Suber v. Bulloch County Bd. of Educ.*, 722 F. Supp. 736 (S.D. Ga. 1989).

**Impact of failure to send timely notice.** — Although a school system did not send a timely non-renewal notice under O.C.G.A. § 20-2-942(b)(2), the teacher knew that the basis for the notice was the teacher's unexcused absences; because the teacher did not mitigate damages and the school system was stubbornly litigious, lost wages, and attorney's fees, at the agreed-upon rate, were proper under O.C.G.A. §§ 13-6-5 and 13-6-11. *Boone v. Atlanta Indep. Sch. Sys.*, 275 Ga. App. 131, 619 S.E.2d 708 (2005).

**"Tentative" means decision that is final unless good cause is shown to set the decision aside.** *Owen v. Long County Bd. of Educ.*, 245 Ga. 647, 266 S.E.2d 461 (1980).

**Tenure status not achieved.** — Trial court properly concluded that as the teacher was hired after the school year began, the teacher had not been employed for two consecutive school terms and thus had not met the requirements for tenure provided in O.C.G.A. § 20-2-942; thus, the teacher was not entitled to notice and a hearing before non-renewal of the teacher's employment contract. *Dorsey v. Atlanta Bd. of Educ.*, 255 Ga. App. 104, 564 S.E.2d 509 (2002).

**Nonrenewal of tenured teacher's contract prohibited except for cause.** — At least implicitly, Ga. L. 1975, p. 360, § 5 prohibits the nonrenewal of a tenured

teacher's contract except for cause, such as is specified in Ga. L. 1975, p. 360, § 1 and provides that a tenured teacher has a protectable property interest in his or her job. *LaPier v. Holliman*, 514 F. Supp. 692 (N.D. Ga. 1980).

**Section applies only when contract renewed for fourth year.** — First sentence of subsection (c) of O.C.G.A. § 20-2-942 modifies subsection (a) of that section and requires renewal of a teacher's contract for a fourth consecutive year as a prerequisite to application of § 20-2-942. *Andrews v. Howard*, 249 Ga. 539, 291 S.E.2d 541 (1982).

When the teacher's contract was not renewed for a fourth year, the teacher was not entitled to the protection of O.C.G.A. § 20-2-942, and former § 20-2-941 governed the method of termination. *Andrews v. Howard*, 249 Ga. 539, 291 S.E.2d 541 (1982).

**If list of charges and hearing not timely requested, board's decision final.** — If a party does not request a list of charges and a hearing within the specified statutory period permitted, the decision of the board becomes final and conclusive as a matter of law. *Owen v. Long County Bd. of Educ.*, 245 Ga. 647, 266 S.E.2d 461 (1980).

**Evidence supporting finding of incompetence, insubordination, and/or willful neglect basis for contract nonrenewal.** — Competent and probative evidence before a county board which supports a finding of incompetence, insubordination, and/or willful neglect of duties is a sufficient basis for the nonrenewal of a tenured teacher's contract. *Ransum v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978).

**Exhaustion of state remedies prior to civil rights action.** — Former tenured teacher failed to state a claim of a procedural due process violation under 42 U.S.C. § 1983 in the nonrenewal of a teaching contract because the teacher failed to utilize available state remedies under O.C.G.A. §§ 9-6-20, 20-2-940, 20-2-942(b), and 20-2-1160(a) through petitioning the board of education for a hearing or seeking mandamus relief. *Mason v. Clayton County Bd. of Educ.*, No. 08-16131, 2009 U.S. App. LEXIS 10491 (11th Cir. May 19, 2009) (Unpublished).

**Appeal.** — Tenured teacher was not required to appeal to the state board of education; the Atlanta Public Schools' failure to grant the teacher a hearing on the nonrenewal of the teacher's teaching contract after a hearing was requested made such an appeal futile; since such appeals were confined to the record and presupposed that a hearing was held. *Atlanta Pub. Schs v. Diamond*, 261 Ga. App. 641, 583 S.E.2d 500 (2003).

**Cited in** *Goodin v. Ramsey*, 235 Ga. 671,

221 S.E.2d 432 (1975); *Davis v. Griffin-Spalding County Bd. of Educ.*, 445 F. Supp. 1048 (N.D. Ga. 1975); *Willingham v. Carter*, 447 F. Supp. 301 (S.D. Ga. 1978); *Long County Bd. of Educ. v. Owen*, 150 Ga. App. 245, 257 S.E.2d 212 (1979); *Emerson v. Bible*, 247 Ga. 633, 278 S.E.2d 382 (1981); *Arp v. Bremen Bd. of Educ.*, 171 Ga. App. 560, 320 S.E.2d 397 (1984); *Benson v. Carter*, 241 Ga. App. 499, 526 S.E.2d 922 (1999).

### OPINIONS OF THE ATTORNEY GENERAL

**"School year" defined.** — Phrase "school year" is clearly not a term of art and is ordinarily understood to mean a period of nine months beginning in September and ending in June. Under this construction, a teacher would not receive credit for a partial school year's service. 1981 Op. Att'y Gen. No. 81-94.

**Tenure for previously tenured teacher hired by different local board**

**of education following interruption in teaching service.** — After tenure is established in a local board of education, following which there is an interruption in teaching service, a teacher subsequently employed by another local board of education may nonetheless establish tenure in the latter board of education upon acceptance of a second consecutive school year contract. 1990 Op. Att'y Gen. No. U90-16.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 246.

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 362 et seq., 383, 384, 390, 392, 393, 399 et seq.

**ALR.** — Teachers' tenure statutes, 110 ALR 791; 113 ALR 1495; 127 ALR 1298; 145 ALR 1078.

Constitutionality and construction of repeal or modification by legislative action

of teachers' tenure statute, as regards retrospective operation, 147 ALR 293.

Compensation of tenure teacher, 154 ALR 148.

Sufficiency of teacher's request for hearing, under statute requiring hearing on request before discharge, 89 ALR2d 1018.

Termination of teacher's tenure status by resignation, 9 ALR4th 729.

### 20-2-943. Powers of local boards of education under this part.

(a) In exercising its powers in the enforcement of due process under this part, a local board of education shall be authorized:

(1) Under Code Section 20-2-940 to:

(A) Terminate the contract of the teacher or other school employee;

(B) Suspend a teacher or other school employee without pay for a period of time not to exceed 60 days. In such event, the teacher or employee shall provide no services for the school system and shall receive no compensation but shall be considered an employee on suspended status; or



(C) Reinstate a teacher or other school employee in the event the teacher or school employee has been temporarily relieved from duty in accordance with this part;

(2) Under Code Section 20-2-942 to:

(A) Nonrenew a teacher's or other school employee's contract;

(B) Renew a teacher's or other school employee's contract; or

(C) Demote a teacher or other school employee from one position in the school system to another position in the school system having less responsibility, prestige, and salary.

(b) Nothing in this part shall be construed as depriving local boards of education and other school officials from assigning and reassigning teachers and other certificated professional employees from one school to another or from assigning and reassigning teachers to teach different classes or subjects. (Ga. L. 1975, p. 360, § 4.)

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**Responsibility, prestige, and salary must all be affected for transfer to be considered demotion.** Rockdale County Sch. Dist. v. Weil, 245 Ga. 730, 266 S.E.2d 919 (1980).

**Reassignment constituting demotion, not transfer.** — Teacher was demoted, rather than transferred, as a result of the teacher's reassignment from the position of language arts coordinator to that of classroom teacher; thus, the teacher suffered both a downward adjustment in pay and a decrease in working hours. Ellis-Adams v. Whitfield County Bd. of Educ., 182 Ga. App. 463, 356 S.E.2d 219 (1987).

**Reassignment occasioned by closing of a school.** — Nothing in the Georgia statutes or court decisions indicates that the plain language of paragraph (a)(2) of O.C.G.A. § 20-2-943 does not apply when the reassignment to a position of less responsibility, prestige, and salary within the school system is occasioned by closing a school and eliminating a position. Hatcher v. Board of Pub. Educ. & Orphanage, 809 F.2d 1546 (11th Cir. 1987).

**Failure to reassign teacher to certain position not demotion.** — Board's decision not to reassign a teacher as the school's "band director" after having as-

signed the teacher those duties for the previous four years was not a demotion within the meaning of the Fair Dismissal Law, O.C.G.A. § 20-2-940 et seq., since such position was not a cognizable tenured position recognized by the Professional Standards Commission. King v. Board of Educ., 214 Ga. App. 325, 447 S.E.2d 657 (1994).

**Reassignment without a reduction in pay not demotion.** — Hamilton v. Telfair County Sch. Dist., 265 Ga. 304, 455 S.E.2d 23 (1995).

Public school employee's federal procedural due process claims failed because the employee, when transferred from a principal position to a lead teacher position at an alternative school, was not demoted as defined in O.C.G.A. § 20-2-943(a)(2)(C) since the employee did not receive a lesser salary or less prestige or less responsibility and actually received an increase in pay, and as such, the employee was not entitled to the procedural protections outlined in O.C.G.A. §§ 20-2-940(b) through (f) and 20-2-942(b)(2), which the employee had been denied, because the employee lacked a property interest under Georgia law. Siler v. Hancock County Bd. of Educ., 510 F. Supp. 2d 1362 (M.D. Ga. 2007).

In a case in which a former school



principal argued that the former principal's due process rights were violated under the Fourteenth Amendment when a school district transferred the former principal without a hearing, that argument was without merit. While O.C.G.A. §§ 20-2-940(b)-(f) and 20-2-942(b)(2) provided that an educational employee had a right to a hearing when facing a demotion, to qualify as a demotion, O.C.G.A. § 20-2-943(a)(2)(C) provided that the sub-

sequent position must be accompanied by a decrease in salary, and the former principal was unable to demonstrate that there was a decrease in salary. *Siler v. Hancock County Bd. of Educ.*, No. 07-11926, 2008 U.S. App. LEXIS 7948 (11th Cir. Apr. 9, 2008) (Unpublished).

**Cited** in *Emerson v. Bible*, 247 Ga. 633, 278 S.E.2d 382 (1981); *Hinson v. Clinch County Bd. of Educ.*, 231 F.3d 821 (11th Cir. 2000).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 219 et seq., 249.

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 362 et seq., 374, 378, 390 et seq.

**ALR.** — Compensation of tenure teacher, 154 ALR 148.

Termination of teacher's tenure status by resignation, 9 ALR4th 729.

Validity, construction, and effect of municipal residency requirements for teachers, principals, and other school employees, 75 ALR4th 272.

### 20-2-944. Letters of reprimand.

A local school superintendent may write a letter of reprimand to a teacher or other school employee for any valid reason. A copy of the letter of reprimand is to remain in the teacher's or employee's permanent personnel file, and the teacher or employee receiving such a letter of reprimand shall have the right to appeal the decision of the superintendent to the local board of education, the hearing to be conducted according to this part. The local board shall have the right either to affirm the decision of the superintendent or to reverse it. If the decision of the local board is to reverse it, the letter of reprimand shall be removed from the teacher's or employee's permanent personnel file. (Ga. L. 1975, p. 360, § 5.)

### RESEARCH REFERENCES

**C.J.S.** — 67 C.J.S., Officers and Public Employees, §§ 89, 91.

### 20-2-945. Rules and regulations.

The State Board of Education and local boards of education may adopt rules and regulations to implement this part not inconsistent with this part. (Ga. L. 1975, p. 360, § 6.)

RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 83, 84.      **C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 196, 197.

**20-2-946. Boards of education subject to this part.**

This part shall apply to boards of education of all public school systems in this state. (Ga. L. 1975, p. 360, § 8; Ga. L. 1983, p. 3, § 53.)

**20-2-947. Part does not authorize contracts of employment.**

Nothing in this part shall be construed as authorizing a local board of education to enter into contracts with any employees for definite terms where such contracts are not already authorized by existing law or by laws to be enacted hereafter, separately from this part. (Ga. L. 1975, p. 360, § 7.)

RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 150 et seq., 169 et seq., 180 et seq., 190.      **C.J.S.** — 78 C.J.S., Schools and School Districts, § 316 et seq.

**20-2-948. Reduction in force policies.**

(a) A local board of education shall not adopt or implement a policy that allows length of service to be the primary or sole determining factor when implementing a reduction in force. The local board shall consider as the primary factor the performance of the educator, one measure of which may be student academic performance.

(b) Any policy that does not comply with subsection (a) of this Code section shall be considered invalid and the State Board of Education shall be authorized to take action to withhold all or any portion of state funds in accordance with Code Section 20-2-243.

(c) This Code section shall not apply if a local board of education eliminates an entire program. (Code 1981, § 20-2-948, enacted by Ga. L. 2012, p. 1037, § 2/SB 184.)

**Effective date.** — This Code section became effective May 2, 2012.

## PART 8

## BONDS AND ACCOUNTS OF PRINCIPALS

**20-2-960. Bonds required; conditions; payment of premiums; applicability of Chapter 4 of Title 45.**

Reserved. Repealed by Ga. L. 2012, p. 358, § 36/HB 706, effective July 1, 2012.

**Editor's notes.** — This Code section was based on Ga. L. 1959, p. 159, §§ 1, 4.

**20-2-961. Preparation and distribution of forms or books for principals' accounts.**

The Department of Education shall prepare forms or books, or both, in which shall be kept the accounting of the funds and property by principals of public schools as provided for in this part. Such forms or books, or both, shall be distributed, free of charge, by the department to each local board of education in this state and in a sufficient quantity as will satisfy the needs of that particular system. (Ga. L. 1959, p. 159, § 2.)

**20-2-962. Quarterly reports by principals; audits by local boards.**

The principal of each public school shall make a quarterly report to the local board of education immediately upon the end of each quarter of the fiscal year, and such report shall contain an account of all receipts and expenditures of such funds during the past quarter. The principal shall also make an annual report of the complete property inventory of the school. The local board may at any time during the school year inspect all receipts, expenditures, and property of each public school. (Ga. L. 1959, p. 159, § 3; Ga. L. 1988, p. 612, § 15.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, § 264.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 728.

**20-2-963. Certain public school systems excluded from part.**

Repealed by Ga. L. 1983, p. 3, § 53, effective July 1, 1983.



**Editor's notes.** — This Code section was based on Ga. L. 1959, p. 159, § 5.

## PART 9

### PROVIDING UNIFORMS

#### 20-2-980. Expenditures for uniforms for maintenance, food service, or custodial personnel.

The board of education of each county school system is authorized to expend its educational funds for the purpose of providing uniforms for its school maintenance, food service, or custodial personnel. Expenditures for such purposes shall be for educational purposes by facilitating the identification of school maintenance, food service, or custodial personnel, thereby controlling unauthorized access to school campuses and promoting the public health and the safety of students. (Code 1933, § 32-942.1, enacted by Ga. L. 1978, p. 1462, § 1.)

**Code Commission notes.** — Ga. L. 1978, p. 1462, § 1 enacted former Code 1933, § 32-942.1. However, since another Act had previously been enacted under

that section number, Ga. L. 1978, p. 1462, § 1 was codified as former Code 1933, § 32-942.2.

## PART 10

### PROFESSIONAL STANDARDS

**Editor's notes.** — Because Ga. L. 1979, p. 1065, § 5 provided that the "Georgia Professional Standards Act" (enacted by Ga. L. 1976, p. 966) was to stand repealed June 30, 1982, that Act, as amended, was not originally included in this Code. However, Ga. L. 1982, p. 836, § 1 repealed the June 30, 1982, termination date for the "Georgia Professional Standards Act"; and that Act, as amended and otherwise revised, was codified at this part by Ga. L. 1982, p. 836, § 2.

Ga. L. 1998, p. 750, § 11, not codified by the General Assembly, provides that all cases pending before the Professional Practices Commission on June 30, 1998, shall be transferred to the Professional Standards Commission.

**Administrative rules and regulations.** — Rules of general applicability, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Professional Standards Commission, Chapter 505-1 et seq.

### RESEARCH REFERENCES

**Am. Jur. Proof of Facts.** — Emotional Distress by Schoolteacher or Administrator, 18 POF3d 103.

Defense of a Teacher Charged with Unfitness to Teach, 38 POF3d 63.

Proof that a Teacher's License was Im-

properly Revoked: Teacher's Damages and Emotional Stress Award, 66 POF3d 541.

**ALR.** — Liability of school authorities for hiring or retaining incompetent or otherwise unsuitable teacher, 60 ALR4th 260.

**20-2-981. Short title.**

This part shall be known and may be cited as the “Georgia Professional Standards Act.” (Ga. L. 1976, p. 966, § 1; Code 1981, § 20-2-981, enacted by Ga. L. 1982, p. 836, § 2; Ga. L. 1991, p. 1546, § 1.)

**20-2-982. Purpose.**

The following constitute the major purposes of this part:

(1) To simplify and make more efficient the process of certifying educational personnel in Georgia;

(2) To attract the highest possible number of qualified personnel to become educators in Georgia;

(3) To promote the hiring of qualified educators from other states to work in Georgia schools;

(4) To improve the level of preparation of educators, both pre-service and in-service, by requiring for purposes of certification those essential skills and that knowledge needed to deliver effective education;

(5) To adopt standards of professional performance and a code of professional ethics for educators, both of which shall represent standards of performance and conduct which are generally accepted by educators of this state;

(6) To investigate reports of specified criminal conduct, violations of professional or ethical codes of conduct, and violations of certain rules, regulations, and policies by school system educators;

(7) To enforce the requirement that local school systems promptly report specified criminal conduct of school system educators to the commission; and

(8) To impose disciplinary action or a denial of a certificate against an educator. (Code 1981, § 20-2-982, enacted by Ga. L. 1991, p. 1546, § 1; Ga. L. 1998, p. 750, § 3.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1991, the subsection “(a)” designation was deleted at the beginning of this Code section, since there is no subsection (b).

**JUDICIAL DECISIONS**

**Cited** in Prof'l Stds. Comm'n v. Smith, 257 Ga. App. 418, 571 S.E.2d 443 (2002).

20-2-982.1. Definitions.

As used in this part, the term:

- (1) "Commission" means the Professional Standards Commission.
- (2) "Educator" means teachers and school or school system administrators and other education personnel of this state who hold certificates, permits, or other certification documents, including clearance certificates, issued by the Professional Standards Commission and persons who have applied for but have not yet received or have been denied such certificates, permits, or other certification documents from the Professional Standards Commission.
- (3) "Expungement" means the records are destroyed pursuant to subsection (e) of Code Section 20-2-984.5 in accordance with an established records retention schedule.
- (4) "Local board" means the board of education of any local school system.
- (5) "Local school system" means any county school system or any independent school system of a municipality.
- (6) "Local superintendent" means the school superintendent of any local school system.
- (7) "State board" means the State Board of Education.
- (8) "State superintendent" means the State School Superintendent.
- (9) "Teaching" means any professional service rendered or performed by an educator. (Code 1981, § 20-2-982.1, enacted by Ga. L. 1998, p. 750, § 4; Ga. L. 2010, p. 237, § 1F/HB 1079; Ga. L. 2011, p. 511, § 4/HB 285.)

**The 2010 amendment**, effective July 1, 2010, inserted ", including clearance certificates," near the middle of paragraph (2).

**The 2011 amendment**, effective July 1, 2011, in paragraph (3), substituted "re-

cords are destroyed" for "records are sealed and labeled" near the beginning, and added "in accordance with an established records retention schedule" at the end.

**20-2-983. Professional Standards Commission — Creation; composition; terms, qualifications, appointment, and removal of members; filling of vacancies.**

(a) The Professional Standards Commission existing June 30, 1991, is abolished and the term of office of the members of such abolished commission shall expire July 1, 1991. A new Professional Standards Commission is created and attached to the Office of Planning and



Budget for administrative purposes only. The commission shall consist of 18 members to be appointed by the Governor, subject to the provisions of subsections (b) and (c) of this Code section. The term of office of members of the commission shall be three years; except the initial appointments shall begin July 1, 1991, and shall be: six for one year, six for two years, and six for three years. Members of the commission may serve until their successors are appointed and qualified. A member may be reappointed to the commission only one time. Vacancies shall be filled for unexpired terms in the same manner as the original appointments. If a member for any reason discontinues employment or service in the category from which he or she was appointed, that person may not be eligible for reappointment to the commission as a representative of that category. If a member elects to take employment outside the State of Georgia, that person is no longer eligible to serve on the commission. The Governor may remove any member from the commission for misconduct or malfeasance in office, incapacity, or neglect of duty. All members of the commission are to be confirmed by the Senate. Any appointment made by the Governor when the Senate is not in session shall be effective until the appointment is acted upon by the Senate.

(b) The membership of the commission shall consist of:

(1) Nine teachers, not more than one of whom shall be from a state or regionally accredited private school, holding a valid professional certificate; including at least two classroom teachers assigned within the grades kindergarten through five, two classroom teachers assigned within the grades six through eight, and two classroom teachers assigned within grades nine through 12;

(2) Two administrators actively engaged in administration and holding a valid professional certificate;

(3) Two faculty members from state or regionally approved teacher education institutions;

(4) Two members of local boards of education; and

(5) Three representatives of business or other private sector groups with an interest in improving Georgia public schools.

(c) Appointments shall be made by the Governor with consideration given to nominees submitted by professional educator organizations and other education organizations.

(d) All members of the commission, except representatives of teacher education institutions, members of local boards of education, and the representatives of business or other private sector groups, shall hold valid professional Georgia teaching certificates and shall have been actively engaged in teaching or providing related educational, admin-

istrative, or supervisory services in an approved school or approved institution of higher education with state or regionally approved teacher education programs for at least three years immediately preceding appointment. All members of the commission shall be residents of the State of Georgia.

(e) The commission may remove any commissioner from office for neglect of duty, incompetency, or revocation or suspension of his or her certificate issued by the Professional Standards Commission or when such commissioner ceases to be employed full time as an educator in the capacity and position from which he or she was appointed. After such removal, or in the event of a vacancy due to death, resignation, or for any other reason, the Governor shall appoint a successor as provided in this Code section to serve the unexpired term. (Ga. L. 1976, p. 966, §§ 3, 4; Ga. L. 1979, p. 1065, §§ 1, 2; Code 1981, § 20-2-983, enacted by Ga. L. 1982, p. 836, § 2; Ga. L. 1984, p. 22, § 20; Ga. L. 1986, p. 10, § 20; Ga. L. 1991, p. 1546, § 1; Ga. L. 1992, p. 2365, § 4; Ga. L. 1998, p. 750, § 5; Ga. L. 2002, p. 397, § 3.)

### JUDICIAL DECISIONS

#### **Revocation of teacher's certificate.**

— Superior court exceeded the court's authority in overturning the Professional Standards Commission's (PSC) decision to revoke a teacher's teaching certificate because the PSC's decision had a rational basis since the record contained evidence of an adverse consequence to a female student as well as evidence about the teacher's lack of leadership and unprofessional behavior; the PSC, as the state agency charged with authority to revoke,

suspend, or deny a teaching certificate, O.C.G.A. §§ 20-2-983 and 20-2-984(f), is responsible for determining the appropriate sanction for an ethics violation, and the available sanctions include revocation of the educator's teaching certificate, and the superior court is bound to uphold the PSC's judgment if there is any evidence to support the judgment. *Prof'l Stds. Comm'n v. Adams*, 306 Ga. App. 343, 702 S.E.2d 675 (2010).

### OPINIONS OF THE ATTORNEY GENERAL

**Holding over of members.** — Members of the Professional Standards Commission may not continue to serve past the members' appointed three-year terms and until the members' successors are

appointed and qualified; members are public officers subject to O.C.G.A. § 45-2-4, in the absence of express language to the contrary. 1998 Op. Att'y Gen. No. 98-3.

### **20-2-984. Professional Standards Commission — Authority to create and implement standards and procedures for certifying educational personnel; recommending standards and procedures for certification; continuation of teaching certificates; restrictions.**

(a) The commission shall create and implement standards and procedures for certifying educational personnel as qualified for a

certificate to practice in the public schools of Georgia, including the following:

(1) Procedures for limiting the number and types of certificates to the fewest possible consistent with providing qualified teachers for Georgia's schools;

(2) In-service training and related requirements needed to renew or maintain certification;

(3) Multiple or alternative routes to professional teacher certification; and

(4) Requirements, including appropriate examinations and assessments, for acquiring and maintaining certification pursuant to Code Section 20-2-200.

(b) The commission shall recommend to the board of regents and private colleges and universities standards and procedures for preparing educational personnel to qualify for initial and renewable certification to practice in the public schools of Georgia, including the following:

(1) Pre-service preparation;

(2) Approval of teacher education programs, both graduate and undergraduate;

(3) Approval of programs of alternative certification; and

(4) The creation of innovative programs designed to increase the number of minority teachers entering the profession.

(c) All certificates in force in this state which were issued by the state board prior to July 1, 1991, shall continue in full force and effect, subject to all the terms and conditions under which they were issued, until they expire by virtue of their own limitations or until their terms or conditions are modified by action of the commission. All such certificates issued by the state board prior to July 1, 1991, shall be deemed to have been issued by the commission for purposes of any law or regulation relating to such certificates.

(d) The commission shall not have authority over the compensation, benefits, or working conditions of educational personnel in the public schools of Georgia; provided, however, that the commission shall have the authority to make recommendations to the State Board of Education regarding compensation as it relates to certification.

(e) Reserved.

(f) The commission shall have the authority to deny, revoke, or suspend certification or renewal of a school system educator as provided for in Code Section 20-2-984.5.



(g) The commission shall have the authority to issue formal warnings, reprimands, monitoring, or any combination thereof to educators as provided for in Code Section 20-2-984.5.

(h) The commission may provide consultative services pertaining to the teaching profession to anyone who has a vested interest in education and make recommendations to the state board or to local boards which will promote an improvement in the teaching profession. The commission shall be authorized to hold meetings for the purposes of determining recommendations pursuant to this subsection; and, at such meetings, the commission may receive testimony from educators or other persons interested in the improvement of the teaching profession; but the investigative powers of the commission may not be exercised pursuant to the authority of this subsection. (Ga. L. 1976, p. 966, § 5; Code 1981, § 20-2-984, enacted by Ga. L. 1982, p. 836, § 2; Ga. L. 1991, p. 1546, § 1; Ga. L. 1992, p. 1332, § 2; Ga. L. 1992, p. 2365, § 5; Ga. L. 1998, p. 750, § 6; Ga. L. 2012, p. 358, § 37/HB 706.)

**The 2012 amendment**, effective July 1, 2012, deleted former subsection (e), which read: “The commission shall have the authority to suspend certification regulations and requirements upon the rec-

ommendation of the State Board of Education to the extent the commission deems essential for the successful implementation of demonstration plans as provided for in Code Section 20-2-251.”

JUDICIAL DECISIONS

**Revocation of teacher’s certificate.** — Superior court exceeded the court’s authority in overturning the Professional Standards Commission’s (PSC) decision to revoke a teacher’s teaching certificate because the PSC’s decision had a rational basis since the record contained evidence of an adverse consequence to a female student as well as evidence about the teacher’s lack of leadership and unprofessional behavior; the PSC, as the state agency charged with authority to revoke,

suspend, or deny a teaching certificate, O.C.G.A. §§ 20-2-983 and 20-2-984(f), is responsible for determining the appropriate sanction for an ethics violation, and the available sanctions include revocation of the educator’s teaching certificate, and the superior court is bound to uphold the PSC’s judgment if there is any evidence to support the judgment. *Prof’l Stds. Comm’n v. Adams*, 306 Ga. App. 343, 702 S.E.2d 675 (2010).

20-2-984.1. Professional Standards Commission — Adoption of standards of performance and a code of ethics.

(a) It shall be the duty of the commission, by regulation, to adopt standards of performance and a code of ethics for educators. The standards of performance and code of ethics shall represent standards of performance and conduct which are generally accepted by educators of this state. In adopting regulations as provided in this Code section, the commission shall seek the advice of educators of this state. The standards of performance and code of ethics adopted by the commission shall be limited to professional performance and professional ethics.

(b) Upon the adoption by the commission of standards of performance and a code of ethics as provided in subsection (a) of this Code section, educators of this state shall be obliged to meet and comply with such standards of performance and to abide by such code of ethics. (Code 1981, § 20-2-984.1, enacted by Ga. L. 1998, p. 750, § 7.)

### JUDICIAL DECISIONS

**Requirement to report breach of standards.** — In a First Amendment free speech case, the district court did not err in finding that a public educator's complaint to Georgia's Professional Standards Commission was filed pursuant to the educator's official duties. Under O.C.G.A. § 20-2-984.1(b), adherence to the Code of

Ethics was mandatory for all certified educators in Georgia and, under the Code of Ethics, Ga. Comp. R. & Regs. 505-6-.01(4) required educators to report a breach of one or more of the Standards. *Myles v. Richmond County Bd. of Educ.*, No. 07-14468, 2008 U.S. App. LEXIS 5055 (11th Cir. Mar. 6, 2008) (Unpublished).

### **20-2-984.2. Professional Standards Commission — Reports of criminal offenses to local boards of education; requests by local boards for investigation; immunity.**

(a) Superintendents, associate or assistant superintendents, or directors of personnel shall make an immediate written report to the local board of education upon receiving a written report from any identified school system personnel or parent or custodian of a child enrolled in the school system that any school system educator employed by the local unit of administration has committed any of the following specifically identified crimes:

(1) Murder, voluntary manslaughter, aggravated assault, aggravated battery, or kidnapping, as defined in Chapter 5 of Title 16;

(2) Any sexual offense, as provided for in Code Sections 16-6-1 through 16-6-17 or Code Sections 16-6-20 through 16-6-22.2;

(3) Any sexual exploitation of a minor as provided for in Code Section 16-12-100;

(4) Any offense involving marijuana or a controlled substance, as provided for in Chapter 13 of Title 16;

(5) Any offense involving theft, as provided for in Articles 1 and 2 of Chapter 8 of Title 16; or

(6) Unlawfully operating a motor vehicle after being declared a habitual violator for violating Code Section 40-5-54, 40-6-391, 40-6-392, or 40-6-394 or any combination of such Code sections.

(b) If the local board of education determines that the matters reported under subsection (a) of this Code section warrant investigation, then the local board of education shall, within a reasonable period

of time but not later than 30 days from receipt of the report, transmit such report to the commission with a request for investigation. The reporting administrator and the local board of education shall have a good faith, reasonable basis to believe that the incident occurred or evidence exists and shall, in the written report, set forth such basis and detail the nature of the incident, evidence, and names of any and all known witnesses; and in so reporting the administrator and the local board shall be immune from any civil or criminal liability that might otherwise be incurred or imposed.

(c) The willful failure of any such local school system administrator to comply with subsection (a) of this Code section shall be grounds for the commission's recommending to the local board of education or the State Board of Education, or both, imposition on the administrator of any of the disciplinary actions set forth in Code Section 20-2-984.5.

(d) The reporting requirements set forth in this Code section are in addition to and not a substitute for any and all other reporting requirements related to child abuse which exist under Georgia law. (Code 1981, § 20-2-984.2, enacted by Ga. L. 1998, p. 750, § 7.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1998, "of this Code section" was substituted for "of this

Code Section" in the first sentence of subsection (b).

### **20-2-984.3. Professional Standards Commission — Preliminary investigations of violations; requirement for automatic investigation; investigation of sexual offenses.**

(a) Upon receipt of a written request from a local board, the state board, or one or more individual residents of this state, the commission shall be authorized to investigate:

(1) Alleged violations by an educator of any law of this state pertaining to educators or the profession of education;

(2) Alleged violations by an educator of the code of ethics of the commission;

(3) Alleged violations by an educator of rules, regulations, or policies of the state board or the commission;

(4) Complaints alleging a failure by an educator to meet or comply with standards of performance of the commission or the state board; or

(5) Complaints alleging that an educator has been convicted of any felony, of any crime involving moral turpitude, of any other criminal offense involving the manufacture, distribution, trafficking, sale, or possession of a controlled substance or marijuana as provided for in



Chapter 13 of Title 16, or of any other sexual offense as provided for in Code Sections 16-6-1 through 16-6-17 or Code Section 16-6-20, 16-6-22.2, or 16-12-100 in the courts of this state or any other state, territory, or country or in the courts of the United States. As used in this paragraph, the term “convicted” shall include a finding or verdict of guilty or a plea of nolo contendere, regardless of whether an appeal of the conviction has been sought; a situation where first offender treatment without adjudication of guilt pursuant to the charge was granted; and a situation where an adjudication of guilt or sentence was otherwise withheld or not entered on the charge or the charge was otherwise disposed of in a similar manner in any jurisdiction.

(b) The commission shall decide whether to conduct a preliminary investigation pursuant to this Code section within 30 days of the request unless an extension is granted pursuant to the procedure outlined in subsection (b) of Code Section 20-2-984.5. The commission may appoint a committee of its membership with the power to transact and carry out the business and duties of the commission when deciding whether to conduct a preliminary investigation.

(c) When an educator admits on a Professional Standards Commission application to having resigned or being discharged for committing a felony or misdemeanor involving moral turpitude or being under investigation by law enforcement authorities for such conduct or for committing a breach of the code of ethics or for a violation of state education laws or having a criminal history or having had a surrender, denial, revocation, or suspension of a certificate or being the subject of an investigation or adverse action regarding a certificate, an investigation will automatically open without notification to the commission and with written notification to the educator.

(d) Notwithstanding the requirements of this Code section, the staff of the commission shall be authorized, without notification to the commission, to immediately open an investigation submitted to the commission by a local school superintendent, with approval of the local board of education, of a complaint by a student against an educator alleging a sexual offense, as provided for in Code Sections 16-6-1 through 16-6-17 or Code Section 16-6-20, 16-6-22.2, or 16-12-100. (Code 1981, § 20-2-984.3, enacted by Ga. L. 1998, p. 750, § 7; Ga. L. 2002, p. 397, § 4; Ga. L. 2008, p. 125, §§ 1, 2/HB 250; Ga. L. 2009, p. 8, § 20/SB 46.)

**20-2-984.4. Professional Standards Commission — Preliminary investigations; powers of investigator; limitations; notice; change of address; withdrawal of application.**

(a) If the commission agrees to investigate matters reported under Code Section 20-2-984.2 or Code Section 20-2-984.3, an investigator of

the commission shall conduct a preliminary investigation of the reported matters to determine if probable cause exists to recommend disciplinary action. Prior to beginning such investigation, the commission shall send written notification to the local board employing the educators of the following:

- (1) The names and addresses of the parties making the complaint that gave rise to the proposed investigation;
  - (2) The names of the educators employed by the local board who are proposed to be investigated; and
  - (3) An explanation of the complaint made against the educators employed by the local board.
- (b) In conducting an investigation authorized by this Code section, the commission shall:
- (1) Be authorized to conduct plenary hearings;
  - (2) Have the power to administer oaths and affirmations;
  - (3) Have the power to issue subpoenas in the name of the commission to compel the attendance of witnesses and the production of documents and any other things to be used as evidence. Such subpoenas shall be served in any manner now or hereafter provided for service of subpoenas issued by the superior courts. In the event any person fails or refuses to obey a subpoena issued under this paragraph, such failure or refusal shall constitute contempt of the commission. Upon application by the commission to the superior court of the county wherein such person resides or is found, the superior court shall have power, after notice and hearing, to adjudge such person in contempt and to punish such person by a fine not exceeding \$300.00 or by imprisonment not exceeding 20 days or by both such fine and imprisonment and to enter such other orders and take such other action as may be necessary to enforce compliance with and obedience to the subpoena. At such hearing, the person subpoenaed shall be entitled to make any defense and to show any valid reason why he or she failed or refused to comply with the subpoena; and
  - (4) Have the power to access criminal histories of educators through the Georgia Crime Information Center and the National Crime Information Center. This access shall include a GCIC terminal. Information provided by GCIC or NCIC shall be used in accordance with Code Section 35-3-35 and with applicable federal and state laws, rules, or regulations.
- (c) The investigation conducted pursuant to this Code section is limited to the matters asserted in the written complaint unless addi-



tional written complaints are filed. The commission shall be authorized to investigate any matters raised in any such additional complaints while investigating the original complaint.

(d) Prior to being contacted by an investigator, but in no event later than the completion of the investigation conducted pursuant to this Code section, the educator shall receive written notification that he or she is the subject of an investigation and shall also receive written notification of the allegations against him or her. In addition, the educator shall be notified that the investigation shall be limited to those allegations unless additional written allegations are filed.

(d.1) Upon the educator's receipt of written notification that an educator is the subject of such investigation, it shall be the duty of the educator to notify the commission in writing of any change in the educator's home or employment address until the commission issues a final decision in the matter. During this period, the mailing by certified mail of any notice, correspondence, or order regarding an investigation or disciplinary action to the last address specified by the educator after receiving written notice of the investigation or, if the commission has not received a change of address from the educator, the address at which the educator received written notification of an investigation, shall constitute proper notice to the educator. If the commission has been notified in writing that the educator is represented by legal counsel, the commission shall also send a copy of any notice to the educator's legal counsel. Notice by certified mail pursuant to this subsection shall be complete upon mailing.

(e) In no event shall a preliminary investigation take longer than 60 days without written permission from the commission, at which time a written finding of probable cause, or that no probable cause exists, must be made to the commission.

(f) No applicant who is under investigation by the commission shall be allowed to withdraw his or her application for a certificate, permit, or other certification document without the written consent of the commission. The commission shall retain its authority over those applicants to proceed with the denial of the certificate, permit, or other certification document upon any ground provided by law. The suspension or expiration of any certificate, permit, or certification document, or its surrender without the written consent of the commission, shall not deprive the commission of its authority to do any of the following:

- (1) Institute or continue an investigation or a disciplinary proceeding against the holder of a certificate, permit, or other certification document upon any ground provided by law;

- (2) Enter an order denying, suspending, or revoking the certificate, permit, or other certification document; or



(3) Issue an admonition to the holder of a certificate, permit, or other certification document. (Code 1981, § 20-2-984.4, enacted by Ga. L. 1998, p. 750, § 7; Ga. L. 2002, p. 397, § 5.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2002, in subsection (b), “and” was deleted from the end of paragraph (b)(2) and “; and” was substituted for a period at the end of paragraph (b)(3), and “investigation or, if” was substituted for “investigation, or if” in the second sentence of subsection (d.1).

**20-2-984.5. Professional Standards Commission — Preliminary investigations; disciplinary actions; hearings; consultative services.**

(a) After a preliminary investigation authorized by Code Section 20-2-984.4, the commission shall review the report of the investigator and either determine that no further action need be taken or recommend that a particular disciplinary action be imposed. This determination shall be made no later than the commission’s regularly scheduled meeting next occurring after 60 days from receipt of the findings of the preliminary investigation.

(b) Prior to the expiration of that period referred to in subsection (a) of this Code section, the commission may extend the review period if unusual and compelling circumstances render it impracticable for the commission to complete its review within such period. Any such order shall recite with particularity the circumstances which render it impracticable for the commission to complete its review within such period. Any such extension by the commission shall be for a period of time not to exceed 30 days. Prior to the expiration of the extended review period, the review period may be further extended by further order of the commission for one additional period not to exceed 30 days if unusual and compelling circumstances render it impracticable to complete the review within the extended review period. Such further order further extending the review period shall likewise recite with particularity the circumstances which render it impracticable for the commission to complete its review within the review period as previously extended. Notwithstanding any provision of this subsection to the contrary, in cases where there are pending criminal charges against an educator, the commission, on its own motion or in response to a request by an educator, may enter an order extending the review period until the criminal charges have been fully resolved.

(c) If the commission finds that there is probable cause for imposing a sanction against the educator, it may recommend any combination of the following:

- (1) That the educator be warned, reprimanded, monitored, or any combination thereof; or

(2) That the certificate of the educator be suspended, revoked, or denied.

The commission shall provide to the educator, at the time of the initial probable cause finding, a written summary statement of the findings of fact upon which the probable cause was determined.

(d) In a contested case, if the commission determines that probable cause exists to impose a sanction against an educator or to deny a certificate to an applicant, an opportunity for a hearing shall be provided to the educator or applicant pursuant to Code Section 50-13-41. Based on the findings of fact and conclusions of law of the administrative law judge as provided in that Code section, the commission may take any combination of the actions referred to in subsection (c) of this Code section.

(e) If after reviewing the findings of the preliminary investigation the commission finds that no probable cause exists to recommend disciplinary action or the educator investigated is exonerated after a hearing, then all records of the commission's investigation and of any hearing by the commission, including all reports received pursuant to this subsection, made pursuant to this Code section and pertaining to the educator investigated shall be completely expunged.

(f) In addition to making recommendations pursuant to subsection (c) of this Code section, the commission may provide consultative services pertaining to the teaching profession to anyone who has a vested interest in education and make recommendations to the state board or to local boards which will promote an improvement in the teaching profession. The commission shall be authorized to hold meetings for the purposes of determining recommendations pursuant to this subsection; and, at such meetings, the commission may receive testimony from educators or other persons interested in the improvement of the teaching profession; but the powers provided by subsection (d) of this Code section may not be exercised pursuant to the authority of this subsection. (Code 1981, § 20-2-984.5, enacted by Ga. L. 1998, p. 750, § 7; Ga. L. 1999, p. 81, § 20; Ga. L. 2000, p. 136, § 20; Ga. L. 2002, p. 397, § 6; Ga. L. 2011, p. 511, § 5/HB 285.)

**The 2011 amendment**, effective July 1, 2011, substituted "hearing by the commission" for "hearing by the Department of Education or the State Board of Education" near the middle of subsection (e).

## JUDICIAL DECISIONS

**Cited in** Prof'l Stds. Comm'n v. Smith, 257 Ga. App. 418, 571 S.E.2d 443 (2002).

**20-2-985. Professional Standards Commission — Selection of chairman; calling of meetings; quorum; minutes; annual report.**

(a) The Governor shall annually select a chairman from the membership of the commission. Meetings shall be held at the call of the chairman or upon the request in writing of a majority of the commission. A majority of such quorum shall have authority to act upon any matter properly brought before the commission.

(b) The commission shall keep minutes of its meetings and make an annual written report available for inspection. (Ga. L. 1976, p. 966, §§ 5, 6; Code 1981, § 20-2-985, enacted by Ga. L. 1982, p. 836, § 2; Ga. L. 1991, p. 1546, § 1; Ga. L. 1992, p. 2365, § 6.)

**20-2-986. Professional Standards Commission — Reimbursement; retention of income and benefit rights by members employed by state agency or political subdivision; reimbursement for employee's performance of duties as commission member.**

Members of the commission shall receive no compensation for their services but shall, upon approval by the chairman, be reimbursed for their actual and necessary expenses incurred in the performance of official commission business as provided by Code Section 45-7-20. No member of the commission, with the exception of members of the executive committee of the commission, shall be reimbursed from any public funds for such expenses for more than 30 days during each calendar year, except that there shall be no limitation on the number of meeting days for one year after July 1, 1991. A member of the commission who is an employee of an agency of the state, or any of its political subdivisions, including school systems, shall be permitted to attend commission meetings and perform other commission duties without loss of income or other benefits. An agency of Georgia, or any of its political subdivisions, including school systems, which employs a member of the commission and employs a person to replace such member during the member's performance of commission duties or incurs other additional expenses as a result of such performance shall be reimbursed for the actual amount of any costs so incurred. (Ga. L. 1976, p. 966, § 7; Ga. L. 1977, p. 999, § 1; Ga. L. 1979, p. 1065, § 3; Code 1981, § 20-2-986, enacted by Ga. L. 1982, p. 836, § 2; Ga. L. 1984, p. 1201, § 2; Ga. L. 1985, p. 149, § 20; Ga. L. 1991, p. 1546, § 1; Ga. L. 1992, p. 2365, § 7; Ga. L. 2002, p. 397, § 7.)



**20-2-987. Professional Standards Commission — Executive secretary; employees' membership in state retirement systems; transfer of property and employees to commission; commission substitute for Department of Education.**

(a) The commission shall appoint an executive secretary who shall serve as the secretary and executive officer of the commission. Such executive secretary shall be compensated in an amount fixed by the commission. The executive secretary shall have the authority to employ such professional and clerical personnel as may be necessary to carry out the duties and responsibilities of the commission. Personnel of the Department of Education may be utilized by the commission subject to the approval of the State School Superintendent.

(b) All full-time employees of the commission shall be members of the Employees' Retirement System of Georgia, except for members of the Teachers Retirement System of Georgia who, without any break in service, become full-time employees of the commission. Such employees shall continue as members of the Teachers Retirement System of Georgia. All employer contributions to said retirement systems and for social security for said employees shall be paid from funds appropriated for the operation of the commission.

(c) The commission shall, on and after July 1, 1991, assume possession and control of all records, papers, equipment, supplies, and all other tangible property possessed and controlled by the Department of Education as of June 30, 1991, in its performance of functions or duties transferred to the commission under this part or under any other provisions of the 1991 Act which enacted this part. Further, all officers, employees, and agents of the Department of Education who, on June 30, 1991, are employed in the performance of a function or duty which shall be vested in the commission on July 1, 1991, by this part or any other provisions of the 1991 Act which enacted this part shall be automatically transferred to the commission. The status, position, and rights of persons so transferred shall not be affected by the transfer, in and of itself, and such persons shall retain, inter alia, all rights of rank or grade, rights to annual leave, sick pay and leave, rights under any retirement or personnel plan, and any other rights under any law or administrative policy.

(d) The commission shall succeed to all rules, regulations, policies, procedures, and administrative orders of the Department of Education which are in effect on June 30, 1991, and which relate to the functions transferred to the commission by this part or any other provisions of the 1991 Act which enacted this part. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until

amended, repealed, superseded, or nullified by proper authority or as otherwise provided by law.

(e) The rights, privileges, entitlements, and duties of parties to contracts, leases, agreements, and other transactions entered into before July 1, 1991, by the Department of Education and which pertain to the functions transferred to the commission by this part or any other provisions of the 1991 Act which enacted this part shall continue to exist and none of these rights, privileges, entitlements, and duties are impaired or diminished by reason of the transfer of the functions to the commission. In all such instances, the commission shall be substituted for the Department of Education and the commission shall succeed to the rights and duties under such contracts, leases, agreements, and other transactions. (Ga. L. 1976, p. 966, § 8; Ga. L. 1977, p. 999, § 2; Ga. L. 1979, p. 1065, § 4; Code 1981, § 20-2-987, enacted by Ga. L. 1982, p. 836, § 2; Ga. L. 1983, p. 3, § 16; Ga. L. 1991, p. 1546, § 1; Ga. L. 1992, p. 2365, § 8; Ga. L. 1995, p. 1069, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1985, in the last sentence of subsection (a), “State” was deleted preceding “Department of Educa-

tion” and “State School Superintendent” was substituted for “State Superintendent of Schools”.

## **20-2-988. Duties and authority of commission.**

(a) The Professional Standards Commission shall evaluate transcripts and issue certificates for all educational personnel seeking certification.

(b) The commission shall follow policies consistent with general education objectives established under Georgia statutes.

(c) The commission shall have the authority to hear the public, the teaching profession, and professional groups and associations on any matter of concern under the jurisdiction of the commission.

(d) The commission has the authority to appoint panels of educators, including public school classroom teachers, to serve as members of teams visiting institutions and school systems having teacher education programs for purposes associated with the process of approving said programs. The commission shall also have the authority to review any report of such teams and to determine whether or not programs proposed for its approval meet its adopted criteria. (Ga. L. 1976, p. 966, § 9; Code 1981, § 20-2-988, enacted by Ga. L. 1982, p. 836, § 2; Ga. L. 1991, p. 1546, § 1.)

## **20-2-989. Appropriation of operating funds.**

The funds necessary for the operation of the commission shall come from funds specifically appropriated or otherwise made available to the

Professional Standards Commission. (Ga. L. 1976, p. 966, §§ 10, 11; Code 1981, § 20-2-989, enacted by Ga. L. 1982, p. 836, § 2; Ga. L. 1991, p. 1546, § 1.)

**20-2-989.1. Classifications for certificated personnel; functions of state board transferred to commission.**

(a) The classifications established by the State Board of Education pursuant to Code Section 20-2-200 shall remain in effect until such time as the commission creates classifications for certificated personnel under the terms of this part. Such new classifications will clearly describe the relationship between pre-existing classifications established by the board and the new classifications established by the commission. Until such time as the new classifications are approved, the commission is empowered to approve, grant, deny, or withhold certificates under the existing classifications established by the state board.

(b) It is the intent of this part to transfer to the Professional Standards Commission all functions previously performed by the state board with regard to certification and all functions related thereto, except with regard to public librarians. (Code 1981, § 20-2-989.1, enacted by Ga. L. 1991, p. 1546, § 1; Ga. L. 1994, p. 1796, § 2.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1991, this Code section, which was enacted as Code Section 20-2-990, was redesignated as Code Section 20-2-989.1, since a Code Section 20-2-990 already existed.

PART 11

COMPLAINTS POLICY

**20-2-989.5. Legislative intent; adoption of complaints policy.**

(a) It is the intent of this part to resolve problems at the lowest possible organizational level with a minimum of conflict and formal proceedings so that good morale may be maintained, effective job performance may be enhanced, and the citizens of the community may be better served. These procedures require local units of administration to implement a simple, expeditious, and fair process for resolving problems at the lowest administrative level.

(b) It shall be the duty of all local units of administration to adopt a complaints policy for certified personnel that shall contain the definitions and standards provided in this part. (Code 1981, § 20-2-989.5, enacted by Ga. L. 1992, p. 3303, § 1.)



**20-2-989.6. Definitions.**

As used in this part, the term:

(1) “Administrator” means the individual at each level designated by the local unit of administration to preside over and make decisions with respect to complaints.

(2) “Central office administrator” means the local school system superintendent or the director of a Regional Education Service Agency (RESA).

(3) “Complaint” means any claim by a certified employee of any local unit of administration who is affected in his or her employment relationship by an alleged violation, misinterpretation, or misapplication of statutes, policies, rules, regulations, or written agreements of the local unit of administration with which the local unit of administration is required to comply.

(4) “Local unit of administration” means the local board of education or the local board of control of a RESA. (Code 1981, § 20-2-989.6, enacted by Ga. L. 1992, p. 3303, § 1.)

**20-2-989.7. Matters not subject to complaint.**

(a) The performance ratings contained in personnel evaluations and professional development plans pursuant to Code Section 20-2-210 and job performance shall not be subject to complaint under the provisions of this part. The termination, nonrenewal, demotion, suspension, or reprimand of any employee, as set forth in Code Section 20-2-940, and the revocation, suspension, or denial of certificates of any employee, as set forth in Code Section 20-2-984.5, shall not be subject to complaint under the provisions of this part.

(b) A certified employee who chooses to appeal under Code Section 20-2-1160 shall be barred from pursuing the same complaint under this part. (Code 1981, § 20-2-989.7, enacted by Ga. L. 1992, p. 3303, § 1; Ga. L. 1999, p. 81, § 20.)

**20-2-989.8. Establishment and contents of complaint policy.**

Local units of administration shall establish a complaint policy that shall include the following:

(1) A statement that a complaint by the certified employee at the initial level shall be in writing and shall clearly state the intent of the employee to access the complaints policy. All certified employees shall request in writing successive levels of review;

(2) A method and time frame for filing complaints and appeals, including successive levels of appeal from the complainant's immediate supervisor to the central office administrator to the local unit of administration, provided that the complainant shall be entitled to file a complaint within ten days from the most recent incident upon which the complaint is based, and provided that the complainant shall have a minimum of ten days to file an appeal at any level up to and including the local unit of administration, and provided that the total time frame shall not exceed 60 days from the initiation of the complaint until notification to the complainant of the decision rendered by the local unit of administration;

(3) A statement setting forth the manner in which notice of the initial hearing and appeals shall be given;

(4) A statement that the complainant shall be entitled to an opportunity to be heard, to present relevant evidence, and to examine witnesses at each level;

(5) A provision whereby the complainant is entitled to the presence of an individual of his or her choice to assist in the presentation of the complaint to the central office administrator and at the local unit of administration level. The policy shall also include a provision whereby the presence of any individual other than the complainant and the administrator at any lower level is specifically prohibited. At the local unit of administration level nothing shall prevent the local unit from having an attorney present to serve as the law officer who shall rule on issues of law and who shall not participate in the presentation of the case for the administrator or the complainant;

(6) Provisions for keeping an accurate record of the proceedings at each level, requiring the proceedings to be recorded by mechanical means, preserving all evidence, and requiring that these be made available at all times to the parties involved but which provisions do not permit the presence of a third person at any level below the central office administrator or local unit of administration level;

(7) A statement that the complainant cannot present additional evidence at each level of the complaint process unless it is submitted in writing by the complainant five days prior to the set date for the Level II and Level III hearing to the administrator presiding over the complaint. The board of the local unit of administration, when hearing an appeal from a prior complaint level, shall hear the complaint *de novo*;

(8) A statement that each decision be made in writing and dated. Each decision shall contain findings of fact and reasons for the particular resolution reached. The decision reached at each complaint level shall be sent to the complainant by certified mail or

statutory overnight delivery or hand delivered by a person designated by the central office administrator within 20 days of the decision;

(9) A statement that any complaint not processed by the administrator or the local unit of administration within the time frames required by the local complaint procedure and this part shall be forwarded to the next level of the complaint procedure;

(10) A provision that all costs and fees shall be borne by the party incurring them unless otherwise agreed upon by the parties involved, except that the cost of preparing and preserving the record of the proceedings shall be borne by the local board of education; and

(11) A statement that a complainant shall not be the subject of any reprisal as a result of filing a complaint under this part. Should any reprisal occur, the complainant may refer the matter to the Professional Standards Commission. (Code 1981, § 20-2-989.8, enacted by Ga. L. 1992, p. 3303, § 1; Ga. L. 1998, p. 750, § 8; Ga. L. 2000, p. 1589, § 3.)

**Editor's notes.** — Ga. L. 1998, p. 750, § 11, not codified by the General Assembly, provides that all cases pending before the Professional Practices Commission on June 30, 1998, shall be transferred to the Professional Standards Commission.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the Act is applicable with respect to notices delivered on or after July 1, 2000.

### **20-2-989.9. Supplemental rules and policies authorized.**

Nothing in this part shall be construed to prevent a local unit of administration from adopting supplemental rules and policies not inconsistent with this part that grant additional substantive and procedural rights to the complainant with respect to this part. (Code 1981, § 20-2-989.9, enacted by Ga. L. 1992, p. 3303, § 1.)

### **20-2-989.10. Collective bargaining not permitted or fostered.**

Nothing in this part shall be construed to permit or foster collective bargaining as part of the state rules or local unit of administration policies. (Code 1981, § 20-2-989.10, enacted by Ga. L. 1992, p. 3303, § 1.)

### **20-2-989.11. Appeals to State Board of Education.**

Appeals from the decision of the local unit of administration to the State Board of Education shall be governed by state board policy and Code Section 20-2-1160. (Code 1981, § 20-2-989.11, enacted by Ga. L. 1992, p. 3303, § 1; Ga. L. 2012, p. 775, § 20/HB 942.)



**The 2012 amendment**, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted

“State Board of Education” for “Georgia Board of Education” in this Code section.

## PART 12

### GRADE INTEGRITY

**Editor’s notes.** — Ga. L. 2007, p. 253, § 1/SB 9, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Grade Integrity Act of 2007.’”

#### **20-2-989.20. No teacher to be required or coerced into changing student grades; ethical violation; change of grade by person other than classroom teacher.**

(a) No classroom teacher shall be required, coerced, intimidated, or disciplined in any manner by the local board of education, superintendent, or any local school administrator to change the grade of a student. This subsection shall not apply when a teacher has failed to comply with grading policies or rules adopted by the local board of education or written procedures established by an individual school that are applicable to the grading process, unless such policy, rule, or procedure would require a student be given a grade different than the actual grade achieved. A violation of this Code section shall constitute an ethics violation reportable to the Professional Standards Commission pursuant to Part 10 of this article.

(b) Nothing in this Code section shall be construed to prevent a principal or other local school administrator from discussing the grade of a student with a classroom teacher.

(c) Nothing in this Code section shall be construed to prevent a central office administrator, superintendent, or local school administrator from changing a student’s grade. Any grade change made by a person other than the classroom teacher must be clearly indicated in the student’s school records and must indicate the person responsible for making such grade change. (Code 1981, § 20-2-989.20, enacted by Ga. L. 2007, p. 253, § 2/SB 9.)

## ARTICLE 18

### LIABILITY INSURANCE FOR STATE AND LOCAL SCHOOL OFFICIALS AND EMPLOYEES

#### **20-2-990. Legislative findings.**

The General Assembly finds that an urgent crisis confronts public education in Georgia. Evolving constitutional principles established by

recent judicial decisions impose increased burdens upon school administrators and boards of education and subject them to personal liability under judicial doctrines so unsettled as to render it difficult to predict the legality of actions in advance. Consequently, responsible and competent persons declined to accept appointment and employment, with resulting detriment to public administration. This crisis has become so grave that immediate relief is essential to quality education, and the purchase of protection through liability insurance and contracts of indemnity, and the defense of civil and criminal actions at public expense, as part of the public compensation paid to such officials and employees, offers the only feasible solution. Therefore, the General Assembly finds that the expenditure of public funds for such purposes in these circumstances is for educational purposes and in furtherance of the support and maintenance of public schools and public education. (Ga. L. 1973, p. 1267, § 1.)

**Law reviews.** — For article, "Personal Liability of State Officials under State and Federal Law," see 9 Ga. L. Rev. 821 (1975).

### OPINIONS OF THE ATTORNEY GENERAL

**Purchase of liability policy covering action for injuries to students valid.** — Purchase of a liability insurance policy which covers school officials and employees against injuries a student

might receive while participating in an extracurricular athletic activity is a valid expenditure of school funds by a school district. 1984 Op. Att'y Gen. No. 84-66.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 57 Am. Jur. 2d, Municipal, County, School, and State Tort Liability, §§ 42 et seq., 518 et seq. 63C Am. Jur. 2d, Public Officers and Employees, §§ 322 et seq., 336 et seq., 407.

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 570, 648 et seq.

**ALR.** — Tort liability of public schools and institutions of higher learning for injuries caused by acts of fellow students, 36 ALR3d 330.

Tort liability of public schools and institutions of higher learning for accidents occurring in physical education classes, 36 ALR3d 361.

Tort liability of public schools and institutions of higher learning for injuries resulting from lack or insufficiency of supervision, 38 ALR3d 830.

Personal liability of public school teacher in negligence action for personal injury or death of student, 34 ALR4th 228.

Personal liability of public school executive or administrative officer in negligence action for personal injury or death of student, 35 ALR4th 272.

Personal liability in negligence action of public school employee, other than teacher or executive or administrative officer, for personal injury or death of student, 35 ALR4th 328.

Tort liability of public schools and institutions of higher learning for accidents occurring in physical education classes, 66 ALR5th 1.

Tort liability of schools and institutions of higher learning for personal injury suffered during school field trip, 68 ALR5th 519.

Tort liability of public schools and institutions of higher learning for accidents occurring during school athletic events, 68 ALR5th 663.

Tort liability of public schools and insti-

tutions of higher learning for injury to student walking to or from school, 72 ALR5th 469.

**20-2-991. (Effective until January 1, 2013. See note.) Liability insurance for performance of duties authorized; actions against insurers; admissibility of insurance in evidence.**

In addition to other compensation paid to members of the State Board of Education, the State School Superintendent, and employees of the state board, and to members of boards of education, school superintendents, teachers, principals, officers, and employees of boards of control of cooperative educational service agencies, and other administrators and employees of county and other local public school systems, the state board, the boards of control of cooperative educational service agencies, and the several boards of education of counties, cities, and independent school systems, whenever created, are authorized, in their discretion, to purchase policies of liability insurance or contracts of indemnity insuring or indemnifying the members of the state board, State School Superintendent, employees of the state board, officers and employees of boards of control of cooperative educational service agencies, and the members of the boards of education, superintendents, teachers, principals, and other administrators and employees against damages arising out of the performance of their duties or in any way connected therewith, whether based upon negligence, violation of contract rights, or violation of civil, constitutional, common-law, or other statutory rights, whether state, federal, or both. Such boards may expend state, county, federal, and local funds, or any combination thereof, for such purposes. The amount of such insurance or indemnity shall be in the discretion of the respective board. No action shall be maintained against the person or company issuing such insurance or contracting for such indemnity until final judgment has first been entered against the individual covered by such policy or contract, and the existence of such insurance or indemnity shall not be disclosed or suggested in any action brought against such individual. (Ga. L. 1973, p. 1267, § 2; Ga. L. 1975, p. 1181, § 1.)

**Editor's notes.** — Code Section 20-2-991 is set out twice in this Code. The first version is effective until January 1,

2013, and the second version becomes effective on that date.

### JUDICIAL DECISIONS

**Sovereign immunity not waived by purchase of insurance.** — In an action against a school board and school principal for injuries to a student who tripped

and fell through a glass door at the school entrance, official immunity of the principal was not waived by the mere existence of a liability insurance policy. *Davis v.*



Dublin City Bd. of Educ., 219 Ga. App. 121, 464 S.E.2d 251 (1995).

**Sovereign immunity waived to extent of insurance coverage.** — In regard to a personal injury action arising from an accident involving a school bus,

the school district waived sovereign immunity to the extent the district was covered by liability insurance. *Coffee County Sch. Dist. v. King*, 229 Ga. App. 143, 493 S.E.2d 563 (1997).

### OPINIONS OF THE ATTORNEY GENERAL

**Local board cannot establish program of self-insurance for itself.** —

While a local board of education could establish a program of self-insurance to cover the deductible portion of any liability imposed upon the board's officers or

employees, the board could not do so for itself and would be limited to the protection expressly authorized by Ga. L. 1973, p. 1267, § 2 or Ga. L. 1973, p. 1267, § 4. 1977 Op. Att'y Gen. No. 77-61.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, §§ 134, 351 et seq., 480. 68 Am. Jur. 2d, Schools, §§ 134, 135.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 570.

**ALR.** — Tort liability of public schools and institutions of higher learning for injuries caused by acts of fellow students, 36 ALR3d 330.

Tort liability of public schools and institutions of higher learning for accidents occurring in physical education classes, 36 ALR3d 361.

Tort liability of public schools and institutions of higher learning for injuries resulting from lack or insufficiency of supervision, 38 ALR3d 830.

Validity and construction of statute authorizing or requiring governmental unit to procure liability insurance covering public officers or employees for liability arising out of performance of public duties, 71 ALR3d 6.

Personal liability of public school executive or administrative officer in negligence action for personal injury or death of student, 35 ALR4th 272.

Personal liability in negligence action of public school employee, other than teacher or executive or administrative officer, for personal injury or death of student, 35 ALR4th 328.

Tort liability of public schools and institutions of higher learning for accidents occurring in physical education classes, 66 ALR5th 1.

Tort liability of schools and institutions of higher learning for personal injury suffered during school field trip, 68 ALR5th 519.

Tort liability of public schools and institutions of higher learning for accidents occurring during school athletic events, 68 ALR5th 663.

Tort liability of public schools and institutions of higher learning for injury to student walking to or from school, 72 ALR5th 469.

**20-2-991. (Effective January 1, 2013. See note.) Liability insurance for performance of duties authorized; actions against insurers.**

In addition to other compensation paid to members of the State Board of Education, the State School Superintendent, and employees of the state board, and to members of boards of education, school superintendents, teachers, principals, officers, and employees of boards of control of cooperative educational service agencies, and other administrators

and employees of county and other local public school systems, the state board, the boards of control of cooperative educational service agencies, and the several boards of education of counties, cities, and independent school systems, whenever created, are authorized, in their discretion, to purchase policies of liability insurance or contracts of indemnity insuring or indemnifying the members of the state board, State School Superintendent, employees of the state board, officers and employees of boards of control of cooperative educational service agencies, and the members of the boards of education, superintendents, teachers, principals, and other administrators and employees against damages arising out of the performance of their duties or in any way connected therewith, whether based upon negligence, violation of contract rights, or violation of civil, constitutional, common-law, or other statutory rights, whether state, federal, or both. Such boards may expend state, county, federal, and local funds, or any combination thereof, for such purposes. The amount of such insurance or indemnity shall be in the discretion of the respective board. No action shall be maintained against the person or company issuing such insurance or contracting for such indemnity until final judgment has first been entered against the individual covered by such policy or contract. (Ga. L. 1973, p. 1267, § 2; Ga. L. 1975, p. 1181, § 1; Ga. L. 2011, p. 99, § 37/HB 24.)

**The 2011 amendment**, effective January 1, 2013, deleted “, and the existence of such insurance or indemnity shall not be disclosed or suggested in any action brought against such individual” following “contract” at the end of the last sentence. See editor’s note for applicability.

**Editor’s notes.** — Code Section 20-2-991 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that the 2011 amendment to this Code section shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

**Law reviews.** — For article, “Evidence,” see 27 Ga. St. U. L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 1 (2011).

### **20-2-991.1. Including nonprofit organizations, their members, and school volunteers in policies and indemnity contracts.**

A policy of liability insurance or contract of indemnity purchased pursuant to Code Section 20-2-991 by a board of education of a county, city, or independent school system may, in the board’s discretion, include provisions insuring nonprofit organizations, their members, and school volunteers against damages arising out of the performance of volunteer duties in support of the educational purposes of the school system, when such duties are authorized by the board or its designee; provided, however, that the inclusion of such provisions relating to nonprofit organizations and their members (1) has no effect whatsoever on the cost of the policy or contract so purchased either at its initial

purchase or upon renewal and (2) does not require the expenditure of state, county, federal, or local funds for the administration of such provisions. (Code 1981, § 20-2-991.1, enacted by Ga. L. 1999, p. 326, § 1.)

**Editor's notes.** — Ga. L. 1999, p. 326, § 2, not codified by the General Assembly, provided that the 1999 amendment was

applicable to policies and contracts entered into or renewed on or after July 1, 1999.

## 20-2-992. Immunity not waived.

Nothing in this article shall be construed as waiving any immunity or privilege now or hereafter enjoyed by the State Board of Education, by the board of control of any cooperative educational service agency, by any local board of education, by any member of any such board, or by any employee of the state board, school superintendent, principal, teacher, administrator, or other employee or as waiving any immunity or privilege of any state or other public body, board, agency, or political subdivision. (Ga. L. 1973, p. 1267, § 3; Ga. L. 1975, p. 1181, § 1.)

**Law reviews.** — For note discussing sovereign immunity in light of *Hennessy*

*v. Webb*, 245 Ga. 329, 264 S.E.2d 878 (1980), see 32 Mercer L. Rev. 433 (1980).

## JUDICIAL DECISIONS

**Applicability of constitutional immunity.** — Immunity in Ga. Const. 1983, Art. I, Sec. II, Para. IX for the state and any of the state's departments and agencies to the extent of any liability insurance provided applies to county boards of education. *Thigpen v. McDuffie County Bd. of Educ.*, 255 Ga. 59, 335 S.E.2d 112 (1985).

**Immunity extends to school districts.** — Sovereign immunity extends to school districts under the 1991 amendment of Ga. Const. 1983, Art. I, Sec. II, Para. IX, and the legislature has not provided for a waiver of such immunity. *Bitterman v. Atkins*, 217 Ga. App. 652, 458 S.E.2d 688 (1995).

**Immunity not waived by § 20-2-993.** — O.C.G.A. § 20-2-993 merely allows for government-provided defense, not for payment of any liability damages, and does not, when read together with O.C.G.A. § 20-2-992, waive sovereign immunity. *Holloway v. Rogers*, 181 Ga. App. 11, 351 S.E.2d 240 (1986).

**Willful and wanton conduct.** — County boards of education and county school districts are entitled to the defense

of sovereign immunity in a wrongful death action even when plaintiffs allege willful and wanton negligence. *Truelove v. Wilson*, 159 Ga. App. 906, 285 S.E.2d 556 (1981).

There is an element of intent, actual or imputed, in "willful and wanton conduct" which removes such conduct from the range of conduct which may be termed negligent. Proof of willful or wanton conduct will remove the shield of sovereign immunity from individual officers; proof of negligence will not. *Truelove v. Wilson*, 159 Ga. App. 906, 285 S.E.2d 556 (1981).

**School authorities immune from negligence tort liability.** — School boards, and other agencies or authorities in charge of public schools, enjoy immunity from tort liability for personal injuries or death sustained by pupils or other persons in connection therewith, in the absence of a legislative enactment to the contrary, at least when only negligence was involved. *Hennessy v. Webb*, 245 Ga. 329, 264 S.E.2d 878 (1980).

School principal's responsibility for ordering new lockers was within the princi-



pal's discretionary duties, and as such, the doctrine of sovereign immunity shielded the principal in the absence of evidence of

wilful, malicious, or corrupt acts. *Bitterman v. Atkins*, 217 Ga. App. 652, 458 S.E.2d 688 (1995).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 57 Am. Jur. 2d, Municipal, County, School, and State Tort Liability, § 16 et seq.

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 138, 139, 455.

**ALR.** — Tort liability of public schools and institutions of higher learning, 86 ALR2d 489.

Modern status of doctrine of sovereign immunity as applied to public schools and institutions of higher learning, 33 ALR3d 703.

Tort liability of public schools and institutions of higher learning for accidents due to condition of buildings or equipment, 34 ALR3d 1166.

Tort liability of public schools and institutions of higher learning for injuries resulting from lack or insufficiency of supervision, 38 ALR3d 830.

Validity and construction of statute authorizing or requiring governmental unit to procure liability insurance covering public officers or employees for liability

arising out of performance of public duties, 71 ALR3d 6.

Tort liability of public school or government agency for misclassification or wrongful placement of student in special education program, 33 ALR4th 1166.

Validity, construction, and effect of provisions releasing school from liability for injuries to students caused by interscholastic and other extracurricular activities, 85 ALR4th 344.

Admissibility, in homicide prosecution, of evidence as to tests made to ascertain distance from gun to victim when gun was fired, 11 ALR5th 497.

Tort liability of public schools and institutions of higher learning for accidents associated with the transportation of students, 23 ALR5th 1.

Appealability, under collateral order doctrine, of order denying qualified immunity in 42 USC § 1983 or Bivens action for damages where claim for equitable relief is also pending — post-Harlow cases, 105 ALR Fed. 851.

### 20-2-993. Defense of actions against officials and employees.

In lieu of obtaining the insurance or indemnity referred to in Code Section 20-2-991 or in addition thereto, such boards may, as part of the compensation and terms of employment of the members thereof and of the officials and employees thereof, adopt policies whereby the board will undertake to defend all or specified civil, criminal, or quasi-criminal actions brought or maintained against such members or such officials and employees arising out of the performance of their duties or in any way connected therewith, whether based upon negligence, violation of contract rights, or violation of civil, constitutional, common-law, or other statutory rights, whether state or federal. Such board may expend state, county, federal, and local funds, or any combination thereof, for such purposes, including, but not limited to attorney's fees, court costs, deposition costs, witness fees and compensation, and all other like costs, expenses, and fees; provided, however, that any and all legal representation of the State Board of Education, the State School Superintendent, and employees of the state board shall be through the office of the Attorney General. (Ga. L. 1973, p. 1267, § 4; Ga. L. 1975, p. 1181, § 1.)

## JUDICIAL DECISIONS

**Section does not waive sovereign immunity.** — O.C.G.A. § 20-2-993 merely allows for government-provided defense, not for payment of any liability

damages, and does not, when read together with O.C.G.A. § 20-2-992, waive sovereign immunity. *Holloway v. Rogers*, 181 Ga. App. 11, 351 S.E.2d 240 (1986).

## OPINIONS OF THE ATTORNEY GENERAL

**Local board cannot establish program of self-insurance for itself.** — While a local board of education could establish a program of self-insurance to cover the deductible portion of any liability imposed upon the board's officers or

employees, the board could not do so for itself and would be limited to the protection expressly authorized by Ga. L. 1973, p. 1267, § 2 or Ga. L. 1973, p. 1267, § 2. 1977 Op. Att'y Gen. No. 77-61.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Funds, §§ 47, 50. 68 Am. Jur. 2d, Schools, § 133.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 9.

**ALR.** — Tort liability of public schools and institutions of higher learning for

accidents due to condition of buildings or equipment, 34 ALR3d 1166.

Tort liability of public schools and institutions of higher learning for accidents associated with the transportation of students, 23 ALR5th 1.

## 20-2-994. Payment of amount of deductible under liability policies.

In addition to other compensation paid to board members, officers, officials, administrators, and other employees referred to in this part, whether under this part or otherwise, the State Board of Education, local boards of education, or boards of control of cooperative educational service agencies, as the case may be, are authorized to make payment for the amount of the deductible identified in the liability policy or policies; provided, however, that:

(1) Such payments may be made only with respect to acts or omissions giving rise to such liability which occur after April 5, 1978, and while the person or persons guilty therefor are still in office or employed by the board responsible under this Code section for making such payment;

(2) Such payments may be made only with respect to acts or omissions connected with or arising out of the performance of the official duties by the person or persons individually liable therefor with the board in question; and

(3) Such payments may be made only if the acts or omissions giving rise to such liability do not involve the commission of any civil or criminal offense against the board otherwise responsible therefor

or involve the misappropriation of funds or property belonging to such board or any public agency. (Ga. L. 1978, p. 1955, § 1.)

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Funds, § 47 et seq.      **C.J.S.** — 78 C.J.S., Schools and School Districts, § 9.

## ARTICLE 18A

### LIABILITY OF EDUCATORS FOR DISCIPLINING STUDENTS

#### **20-2-1000. Limitation on civil damages for disciplining student; “educator” defined; frivolous or nonmeritorious actions; legal counsel for the educator.**

(a) As used in this Code section, the term “educator” means any principal, school administrator, teacher, guidance counselor, paraprofessional, school bus driver, volunteer assisting teachers in the classroom, tribunal members, or certificated professional personnel.

(b) No educator shall be liable for any civil damages for, or arising out of, any act or omission concerning, relating to, or resulting from the discipline of any student or the reporting of any student for misconduct, except for acts or omissions of willful or wanton misconduct.

(c) If a judgment or finding is rendered in favor of a defendant educator in any action, complaint, disciplinary proceeding, or other administrative proceeding brought by a student, a parent or guardian of a student, or any other person on behalf of a student and arising out of or resulting from the discipline of such student or if the complaint is found to be nonmeritorious, frivolous, or without just cause, all reasonable court costs, reasonable attorneys’ fees, and reasonable expenses incurred by the defendant educator in defending such action or complaint shall be assessed by the court, agency, or other tribunal against the plaintiff and shall be paid by the plaintiff. Any educator shall have a right to bring an action or a counterclaim against the plaintiff in any such action or proceeding for any damages suffered by the educator as a result of the actions of the student or the filing of any frivolous or nonmeritorious action, complaint, or report. Nothing in this subsection shall be construed to apply to any educator filing a complaint as required by the rules, regulations, or code of ethics of the Professional Standards Commission; any child abuse reporting statute; any applicable local board of education rule, regulation, or policy; or any State Board of Education rule, regulation, or policy.

(d) If any civil action is brought against any educator or any report or complaint is made or filed against any educator with the county or local



board of education, the Department of Education, the Professional Standards Commission, or any other regulatory agency or tribunal by a student, a parent or guardian of a student, or any other person on behalf of a student and arising out of or relating to the discipline of such student, it shall be the duty of the county or local board of education employing such educator to provide counsel for the educator, if requested by the educator, unless such board of education determines, after an independent investigation of the report or complaint, that the act or omission of the educator constituted willful or wanton misconduct or constituted gross misconduct in violation of the express written policies of the board of education. Neither testimony given in such independent investigation nor the results of any such independent investigation by the board of education shall be admissible in any other proceeding. The provision of counsel to such educator shall be for an educational purpose and any funds available to the board of education may be expended for such purpose. Any attorneys' fees recovered pursuant to subsection (c) of this Code section attributable to the services furnished by any counsel provided to an educator by his or her employer shall be paid to the employer. (Code 1981, § 20-2-1000, enacted by Ga. L. 1995, p. 772, § 1; Ga. L. 1997, p. 1436, § 10; Ga. L. 1998, p. 750, § 9; Ga. L. 1999, p. 81, § 20.)

**Editor's notes.** — Ga. L. 1997, p. 1436, § 1, not codified by the General Assembly, provides that the Act shall be known and may be cited as the "School Safety Act."

Ga. L. 1998, p. 750, § 11, not codified by the General Assembly, provides that all cases pending before the Professional

Practices Commission on June 30, 1998, shall be transferred to the Professional Standards Commission.

**Law reviews.** — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U. L. Rev. 155 (1997).

JUDICIAL DECISIONS

**Claims held barred.** — Parent's suit against school officials based on the parent's participation in a disciplinary action against the parent's child was barred by official immunity as the facts the parent

alleged did not show malicious, wilful, or wanton conduct. *Gamble v. Ware County Bd. of Educ.*, 253 Ga. App. 819, 561 S.E.2d 837 (2002).

RESEARCH REFERENCES

**Am. Jur. Proof of Facts.** — Liability of School Bus Driver or School for Injury

to Child Going to or from School Bus, 13 POF3d 475.

20-2-1001. Limited immunity from criminal liability.

(a) As used in this Code section, the term "educator" means any principal, school administrator, teacher, guidance counselor, paraprofessional, school bus driver, volunteer assisting teachers in the classroom, tribunal members, or certificated professional personnel.

(b) An educator shall be immune from criminal liability for any act or omission concerning, relating to, or resulting from the discipline of any student or the reporting of any student for misconduct, provided that the educator acted in good faith. (Code 1981, § 20-2-1001, enacted by Ga. L. 1997, p. 1436, § 11.)

**Editor's notes.** — Ga. L. 1997, p. 1436, § 1, not codified by the General Assembly, provides that the Act shall be known and may be cited as the "School Safety Act."

**Law reviews.** — For article commenting on the enactment of this Code section, see 14 Ga. St. U. L. Rev. 155 (1997).

## ARTICLE 19

### TEXTBOOKS

**Cross references.** — Gifts or compensation to members, appointees, or their families prohibited, § 20-2-10.

**Administrative rules and regulations.** — Learning resources selection and recommendation meeting facilities, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia

Department of Education, Grant Programs, Sec. 160-1-4-.227.

Learning resources selection and recommendation, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Instructional Media/Resources, Sec. 160-4-4-.10.

#### 20-2-1010. State board to prescribe textbooks; choosing from multiple listings.

(a) The State Board of Education is authorized to prescribe, by regulation, the definition of the term "textbook" to include but not be limited to systematically designed material in any medium, whether print, nonprint, or digital including any computer hardware, software, and technical equipment necessary to support such material, that constitutes the principal source of study for a state funded course and to prescribe the textbooks to be used in the various grades in the public schools of this state, including the elementary grades and high school grades. The state board may provide, by regulation, for multiple listings of textbooks for use in the various grades and may, in its discretion, authorize the local school superintendents to exercise a choice as between textbooks so listed or adopted for any particular grade.

(b) Nothing in this Code section shall be construed to exempt computer hardware or related equipment acquired by the state from competitive bidding. (Ga. L. 1937, p. 896, § 1; Ga. L. 1994, p. 1667, § 1; Ga. L. 2010, p. 547, § 1/SB 319; Ga. L. 2011, p. 752, § 20/HB 142.)

**The 2010 amendment,** effective July 1, 2010, designated the existing provisions as subsection (a); substituted "print, nonprint, or digital including any computer hardware, software, and technical

equipment necessary to support such material" for "print or nonprint," near the beginning of the first sentence of subsection (a); and added subsection (b).

**The 2011 amendment,** effective May

13, 2011, part of an Act to revise, modernize, and correct the Code, in subsection (a), in the first sentence, inserted

“whether”, and revised punctuation near the middle.

### OPINIONS OF THE ATTORNEY GENERAL

**State Board of Education may require lay advisory group’s approval as to textbooks the board selects**, provided that in so doing the board continues to exercise the board’s own independent judgment and responsibility in making the final decisions concerning textbook selection and does not in fact attempt to delegate the board’s decision-making pow-

ers to such advisory only committees. 1977 Op. Att’y Gen. No. 77-13.

**State Board of Education rules** pertaining to the adoption of textbooks, particularly the portion allowing local school system input, were consistent with regulatory statutes. 1996 Op. Att’y Gen. No. U96-9.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 353.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 1079.

### 20-2-1011. Manner of selecting and purchasing free textbooks; exclusion of partisan or sectarian material.

The State Board of Education may provide for the selection and purchase of free textbooks either by multiple listings or uniform adoption or by any other method that will enable the acquiring of acceptable books at the lowest possible costs, provided such adoption or multiple listings shall in no event constitute a binding contract until ratified in writing by the state board. None of the books so purchased shall contain anything of a partisan or sectarian nature. (Ga. L. 1937, p. 896, § 1.)

### OPINIONS OF THE ATTORNEY GENERAL

**State Board of Education may require lay advisory group’s approval as to textbooks the board selects**, provided that in so doing the board continues to exercise the board’s own independent judgment and responsibility in making

the final decisions concerning textbook selection and does not in fact attempt to delegate the board’s decision-making powers to such advisory only committees. 1977 Op. Att’y Gen. No. 77-13.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 353.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 1080.



**20-2-1012. Committee or committees to make recommendations on textbooks; additions to approved lists.**

(a) The State Board of Education shall select a committee or committees of educators actually engaged in public school work in this state to examine textbooks and make recommendations thereon to the state board. Such committee or committees shall consist of such number of educators as the state board may deem advisable, not exceeding five in each instance. They shall serve for such time and for such duties as the state board may prescribe and shall receive such compensation as may be fixed by the state board.

(b) In addition to any other method of textbook selection, the State Board of Education shall add to the approved list of textbooks for use in the public schools of this state any textbook or series of textbooks requested in writing by:

(1) The superintendents of five or more different school systems; or

(2) Twenty or more teachers from at least 20 different school systems who teach and are certified to teach the courses encompassed by the textbook requested,

if the requisite number of requests for the specified textbook are received within any 365 day period. A textbook so required to be added to the approved list shall be added within 30 days following the receipt by the state board of the requisite number of requests. No designation shall be included upon the approved list which indicates the manner in which any textbook was added to the list. Other than the selection method, publishers whose textbooks are added to the approved list as provided in this subsection shall be required to comply with the same rules regarding textbooks as other publishers, including but not limited to price, durability, and availability. (Ga. L. 1937, p. 896, § 2; Ga. L. 1995, p. 1017, § 1.)

**OPINIONS OF THE ATTORNEY GENERAL**

**State Board of Education may require lay advisory group's approval as to textbooks the board selects,** provided that in so doing the board continues to exercise the board's own independent judgment and responsibility in making the final decisions concerning textbook selection and does not in fact attempt to delegate the board's decision-making powers to such advisory only committees. 1977 Op. Att'y Gen. No. 77-13.

**Authority of committee that of advisor.** — Committee appointed by the

State Board of Education has no authority other than that of being an advisor to the board. 1973 Op. Att'y Gen. No. 73-79.

**Board not prohibited from listening to interested parties other than professional educators.** — Legislative requirement that the State Board of Education appoint one or more advisory committees composed of educators cannot properly be construed as a prohibition against the board's listening to anyone else on the matter, or as to the board's discretionary power to appoint advisory

committees of interested parties other than professional educators. 1977 Op. Att’y Gen. No. 77-13.

RESEARCH REFERENCES

Am. Jur. 2d. — 68 Am. Jur. 2d, Schools, § 353.

C.J.S. — 78A C.J.S., Schools and School Districts, § 1079.

20-2-1013. Free textbook system; care and protection of textbooks, library books, and media materials; reimbursement by pupils or parents.

(a) The State Board of Education is authorized and directed to inaugurate and administer a system of free textbooks for the public schools of this state. The state board shall have authority to promulgate and enforce such rules and regulations as may be necessary for that purpose.

(b) All hardbound or softbound textbooks, library books, and media materials purchased by local units of administration with state Quality Basic Education Program funds or any other means of acquisition shall remain the property of the local unit purchasing or acquiring them. Assistive technology devices and digital versions of textbooks that are acquired may remain the property of the student; provided, however, that this shall not be construed to violate any contracts or copyright laws. Each local unit of administration shall establish such policies as it deems necessary for the care and protection of its textbooks, library books, and media materials as a condition to receiving all or part of the state contributed Quality Basic Education Program funds allotted to the local unit. Such policies may include any of the following sanctions against a pupil who fails or refuses to pay for a lost or damaged textbook, library book, or media material at the replacement cost:

- (1) Refusal to issue any additional textbooks, library books, or media materials until restitution is made; or
- (2) Withholding of all grade cards, diplomas, or certificates of progress until restitution is made.

No local unit of administration shall require any pupil or parent to purchase any textbook, library book, or media material except in cases where the pupil damages, loses, or defaces such item either through willful intent or neglect. (Ga. L. 1937, p. 896, § 3; Ga. L. 1994, p. 1936, § 2; Ga. L. 2012, p. 893, § 6/SB 289.)

The 2012 amendment, effective July 1, 2012, in the introductory paragraph of subsection (b), inserted “hardbound or softbound” in the first sentence and added the present second sentence.

Law reviews. — For note on the 1994

amendment of this Code section, see 11 Ga. St. U. L. Rev. 184 (1994).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 353. other school supplies for individual use of pupils, 17 ALR 299; 67 ALR 1196.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 1080. Furnishing free textbooks to sectarian school or student therein, 93 ALR2d 986.

**ALR.** — Schools: free textbooks and

### 20-2-1014. Purchases to be at lowest price offered other schools.

All purchases or contracts for purchases shall be made subject to the condition that the price paid by the state shall not exceed the price which may be offered by the publisher to any other school or school authority for substantially the same book. (Ga. L. 1937, p. 896, § 4; Ga. L. 1982, p. 3, § 20.)

**Cross references.** — State purchasing generally, § 50-5-50 et seq.

### OPINIONS OF THE ATTORNEY GENERAL

**Following policies of the State Board of Education are in accordance with this section:** (1) the bid period for the annual adoptions is from August 1 to September 15; (2) prices bid must be current wholesale prices for the bid period based on the publishers' prices for the production year; (3) the publisher is requested to offer an exchange price bid; (4) the bid price shall be the same from the time of the adoption by the State Board of

Education for a five-year period; (5) a bid is considered responsive only if the bidder has complied with all of the provisions outlined in the invitation to bid; and (6) the department staff reviews the bid prices of books offered and recommends to the state textbook committee those books for which it considers the prices to be exorbitant and therefore nonresponsive bids. 1968 Op. Att'y Gen. No. 68-298 (see O.C.G.A. § 20-2-1014).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 353.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 1079.

### 20-2-1015. Electronic format version of textbook required.

The publisher of a textbook recommended by the State Board of Education shall provide an electronic format version of such textbook, which may include a digital version. (Code 1981, § 20-2-1015, enacted by Ga. L. 2001, p. 1048, § 1; Ga. L. 2012, p. 893, § 7/SB 289.)

**The 2012 amendment**, effective July 1, 2012, added “, which may include a digital version” at the end of this Code section.



ARTICLE 20

EDUCATION PARTNERSHIP ACT OF 1990

**20-2-1030 through 20-3-1033.**

Reserved. Repealed by Ga. L. 2012, p. 358, § 38/HB 706, effective July 1, 2012.

**Editor's notes.** — This article was based on Ga. L. 1990, p. 1132, § 1.

ARTICLE 21

BRIEF PERIOD OF QUIET REFLECTION

**20-2-1050. Brief period of quiet reflection authorized; nature of period.**

(a) In each public school classroom, the teacher in charge shall, at the opening of school upon every school day, conduct a brief period of quiet reflection for not more than 60 seconds with the participation of all the pupils therein assembled.

(b) The moment of quiet reflection authorized by subsection (a) of this Code section is not intended to be and shall not be conducted as a religious service or exercise but shall be considered as an opportunity for a moment of silent reflection on the anticipated activities of the day.

(c) The provisions of subsections (a) and (b) of this Code section shall not prevent student initiated voluntary school prayers at schools or school related events which are nonsectarian and nonproselytizing in nature. (Ga. L. 1969, p. 488, § 1; Ga. L. 1994, p. 256, §§ 2, 3.)

**Cross references.** — Freedom of conscience, Ga. Const. 1983, Art. I, Sec. I, Para. III. Religious opinions and freedom of religion, Ga. Const. 1983, Art. I, Sec. I, Para. IV.

**Editor's notes.** — Ga. L. 1994, p. 256, § 1, not codified by the General Assembly, provides: "The General Assembly finds that in today's hectic society, all too few of our citizens are able to experience even a moment of quiet reflection before plunging headlong into the day's activities. Our young citizens are particularly affected by this absence of an opportunity for a moment of quiet reflection. The General As-

sembly finds that our young, and society as a whole, would be well served if students were afforded a moment of quiet reflection at the beginning of each day in the public schools."

Ga. L. 1994, p. 256, § 4, not codified by the General Assembly, provides: "If any portion of this bill is found to be unconstitutional, it shall be stricken and the remaining portions of this bill shall remain in full force and effect as if the stricken portion had not been enacted."

**Law reviews.** — For note on the 1994 amendment of this Code section, see 11 Ga. St. U. L. Rev. 187 (1994).

## JUDICIAL DECISIONS

**Section held constitutional.** — O.C.G.A. § 20-2-1050, as amended by the Moment of Quiet Reflection Act, Ga. L. 1994, p. 256, is constitutional in the statute's entirety, both facially and as applied, and did not violate the establishment clause of the First Amendment to the United States Constitution when the school principal announced over the intercom the quiet moment. *Bown v. Gwinnett County Sch. Dist.*, 895 F. Supp. 1564 (N.D. Ga. 1995), *aff'd*, 112 F.3d 1464 (11th Cir. 1997).

Georgia Moment of Quiet Reflection in Schools Act, Ga. L. 1994, p. 256, does not violate the establishment clause because the Act satisfies all three prongs of the Lemon test. The Act does not have the

primary effect of advancing or inhibiting religion and does not create an excessive government entanglement with religion. *Bown v. Gwinnett County Sch. Dist.*, 112 F.3d 1464 (11th Cir. 1997).

**Standing.** — Plaintiff's status as a teacher, plaintiff's objection to implementing the moment of silence in plaintiff's classroom, and plaintiff's subsequent suspension and termination were sufficient to afford plaintiff standing to challenge the Moment of Quiet Reflection in Schools Act, Ga. L. 1994, p. 256, which amended O.C.G.A. § 20-2-1050. *Bown v. Gwinnett County Sch. Dist.*, 895 F. Supp. 1564 (N.D. Ga. 1995), *aff'd*, 112 F.3d 1464 (11th Cir. 1997).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 436 et seq.

**ALR.** — Constitutionality of regulation or policy governing prayer, meditation, or "moment of silence" in public schools, 110 ALR Fed. 211.

Validity and construction of public school regulation of student distribution of religious documents at school, 136 ALR Fed 551.

## 20-2-1051. Participation not to be regulated or required.

No teacher, principal, school board, or any other person may require or prescribe any particular method or manner in which a child shall participate in any period of silent prayer or meditation, but each child shall be absolutely free to participate therein or not, in such manner or way as such child shall personally desire, consistent with his or her beliefs. (Ga. L. 1969, p. 488, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1992, a comma was inserted following "board".

## RESEARCH REFERENCES

**ALR.** — Constitutionality of regulation or policy governing prayer, meditation, or "moment of silence" in public schools, 110 ALR Fed. 211.

## ARTICLE 22

### SCHOOL BUSES

**Cross references.** — Regulation of operation of school buses, § 40-6-160 et seq. Equipment of school buses, § 40-8-110 et seq. Authority of county boards of education to petition Department of Administrative Services to purchase school buses, tires, parts, and related equipment, § 50-5-70.

**Administrative rules and regulations.** — Student transportation management, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Chapter 160-5-3.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 278 et seq.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 687 et seq.

78A C.J.S., Schools and School Districts, § 1053 et seq.

### PART 1

#### POWERS OF STATE AND LOCAL SCHOOL OFFICIALS

#### **20-2-1070. Powers of State Board of Education as to bus drivers' salaries, federal and other transportation aid, and standards for vehicles and drivers.**

The State Board of Education is authorized to use a part of the public school fund to pay the salaries of bus drivers employed by the several county boards of education. The state board is authorized to administer any and all appropriations that may be made by the United States Congress, its agencies, or bureaus to assist this state in the maintenance and operation of pupil transportation and to administer all funds allocated or appropriated or otherwise made available by the state for pupil transportation; the state board is further authorized to accept and receive donations and gifts of both real and personal property, including vehicles and other equipment, from either public or private sources as may be offered for the support, maintenance, and operation of pupil transportation. (Ga. L. 1947, p. 1461, § 1.)

**Cross references.** — Funding pupil transportation, § 20-2-188.

### JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 32-919, which was subsequently repealed but was succeeded by provisions in this Code sec-

tion, are included in the annotations for this Code section.

**School authorities engaged in transporting children not liable for negligence.** — Transportation by author-



ities of a local school district, or the trustees of a local school district, of children to and from school by a motor bus makes accessible to the children the facilities of education authorized and provided for the children by law and is therefore a part of the operation of the school system, and the authorities, when engaged in this transportation, are in the operation of a governmental function and are therefore not liable in tort, either in an official capacity, or as individuals, for any negligence, through themselves or the authorities' agents, in the operation by the authorities of the motor bus which causes injuries to one of the school children while being transported to and from school. *Roberts v. Baker*, 57 Ga. App. 733, 196 S.E. 104 (1938) (decided under former Code 1933, § 32-919).

**Knowing employment of driver**

**guilty of negligence not malice or willful and wanton conduct.** — Whether or not school authorities, in the operation of the school motor bus, notwithstanding that the authorities are engaged in the performance of a governmental function, would be liable for damages caused by the bus resulting from the authorities' malicious acts or willful and wanton conduct in the operation of the bus, the employment by the authorities of a driver who the authorities know has been guilty of negligence or any conduct in the operation of the bus which caused injury to one of the passengers does not constitute malice or willful and wanton conduct. *Roberts v. Baker*, 57 Ga. App. 733, 196 S.E. 104 (1938) (decided under former Code 1933, § 32-919).

**Cited in** *Smith v. Kicklighter*, 213 Ga. 15, 96 S.E.2d 885 (1957).

## RESEARCH REFERENCES

**Am. Jur. Proof of Facts.** — Liability of School Bus Driver or School for Injury to Child Going to or from School Bus, 13 POF3d 475.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 1030 et seq.

**ALR.** — Gift for public school as a valid charitable gift, 48 ALR 1126.

Transportation of school pupils at expense of public, 63 ALR 413; 118 ALR 806; 146 ALR 625.

Nature and extent of transportation that must be furnished under statute requiring free transportation of school pupils, 52 ALR3d 1036.

## 20-2-1071. Transportation contracts.

Whenever the county board of education deems it for the best interest of the schools of the county, it shall also have the right and power to contract with individuals or corporations for the transportation of pupils and school employees to and from school. (Ga. L. 1947, p. 1461, § 3.)

**Cross references.** — Power to contract for transportation of pupils, § 20-2-504.

## JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1551 (100), which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Transportation not restricted to transporting children to and from school.** — No provision of this section requires that transportation be restricted to merely transporting children to school from their homes and from school to their homes. *Burke County Bd. of Educ. v.*

Raley, 104 Ga. App. 717, 123 S.E.2d 272 (1961) (see O.C.G.A. § 20-2-1071).

**Transportation of pupils and teachers is a matter addressed entirely to the discretion of several county boards** of education of this state, having due regard to the facts and circumstances and the special needs and financial ability of the respective county boards. Douglas v. Board of Educ., 164 Ga. 271, 138 S.E. 226 (1927) (decided under former Code 1910, § 1551 (100)).

**School superintendent is not authorized to exercise the authority vested by this section** in the county board of education. McLeod v. Pulaski County, 50 Ga. App. 356, 178 S.E. 198 (1935) (decided under former Code 1910, § 1551 (100)).

**Board can purchase trucks with funds derived from state or raised by local taxation.** — County board of education can purchase trucks for transporta-

tion and pay therefor from the public school funds of the county derived from the state or raised by county wide taxation. McKenzie v. Board of Educ., 158 Ga. 892, 124 S.E. 721 (1924) (decided under former Code 1910, § 1551 (100)).

**School trustees of district with bonded treasurer which has levied tax are without power to furnish the means of transportation.** McKenzie v. Board of Educ., 158 Ga. 892, 124 S.E. 721 (1924) (decided under former Code 1910, § 1551 (100)).

**Board of Houston County was without authority to consolidate rural schools with Perry City school,** and the board was without the authority to contract for the transportation of pupils to and from the school and to expend school funds for that purpose. Board of Educ. v. Hunt, 159 Ga. 749, 126 S.E. 789 (1925) (decided under former Code 1910, § 1551 (100)).

### OPINIONS OF THE ATTORNEY GENERAL

**Local school board's authority to contract with local transit authority.** — There is no limitation on a local school board's authority to contract with a local transit authority for reduced fares for students. 1989 Op. Att'y Gen. U89-11.

**Lease agreement whereunder board leases buses for single year is not on the agreement's face illegal** merely because the agreement also gives the school board three one-year renewal

options coupled with a purchase option exercisable at the end of the final renewal period; such an agreement might be subject to attack, however, if the yearly "rental payments" are so grossly in excess of what reasonably could be considered to be the "fair rental value" of the buses as to lead to a conclusion that the transaction, while disguised as a lease-plus-purchase option, is essentially a "conditional sale." 1965-66 Op. Att'y Gen. No. 65-33.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 281 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 1044 et seq.

**ALR.** — Tort liability of public schools and institutions of higher learning for accidents associated with transportation of students, 23 ALR5th 1.

**20-2-1072. Financial interest in transportation facilities or sale of school buses, school bus equipment, or school bus supplies of state and local school authorities prohibited.**

No member of the Department of Education or county school superintendent or member of the county board of education shall be financially interested in procuring and operating means or facilities for

school bus transportation or in selling school buses, school bus equipment, or school bus supplies to county boards of education. (Ga. L. 1947, p. 1461, § 4.)

**Cross references.** — Codes of ethics and conflicts of interests for public employees, § 45-10-20.

### OPINIONS OF THE ATTORNEY GENERAL

**It is clear that this section applies to all county boards of education without any exception.** 1950-51 Op. Att'y Gen. p. 45 (see O.C.G.A. § 20-2-1072).

**County board cannot do business with private enterprise owned by board member.** — It is illegal for a county board of education to do business with a private enterprise, corporation, or partnership either partly or wholly owned by a member of the county board of education. 1960-61 Op. Att'y Gen. p. 148.

**County board member prohibited from operating school transportation**

**means or facilities.** — Member of a county board of education would be prohibited from operating either the means or the facilities for school bus transportation for the county board. 1952-53 Op. Att'y Gen. p. 56.

**County commissioner not prohibited from operating school bus.** — Since this section does not apply to a county commissioner of roads and revenues (now county commissioner), there is no law prohibiting such an office holder from operating a county school bus. 1954-56 Op. Att'y Gen. p. 233 (see O.C.G.A. § 20-2-1072).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, § 262.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 1044 et seq.

### **20-2-1073. Transportation forbidden if certified detrimental to student's health; penalty.**

It shall be unlawful to transport any student to or from any public school in this state if a physician, licensed to practice medicine in this state, shall have certified to the superintendent of the county or independent school system, in writing, that the transportation of such student would be detrimental to the health of the student. It shall be unlawful to expend or use public funds for the transportation of students for whom a certificate has been filed by a physician. Any person, school superintendent, or member of a county or independent board of education violating this Code section shall be guilty of a misdemeanor. (Ga. L. 1972, p. 870, § 1.)

### **20-2-1074. Transportation for elderly, persons with disabilities, and 4-H activities.**

Notwithstanding any other provisions of law to the contrary, including Code Section 20-2-411, county and independent school systems may



use school buses to provide transportation for the elderly, persons with disabilities, and 4-H activities if the cost of such transportation is reimbursed in full from federal, state, local, or funds other than school funds. (Code 1933, § 32-942.1, enacted by Ga. L. 1978, p. 1446, § 2; Ga. L. 1982, p. 1693, §§ 1, 2; Ga. L. 1986, p. 10, § 20; Ga. L. 1986, p. 149, § 1; Ga. L. 1987, p. 3, § 20; Ga. L. 1995, p. 1302, § 15.)

OPINIONS OF THE ATTORNEY GENERAL

**Use of school buses by community groups.** — Local board of education may not allow community organizations or private recreational organizations to use a school bus for purposes other than transporting pupils to and from schools or activities which are an integral part of the educational program, even if the group pays all expenses associated with the use

of the bus, except that local boards may allow community organizations or private recreational organizations to use school buses to provide transportation for the elderly and the handicapped if the cost of such transportation is reimbursed in full from funds other than school funds. 1985 Op. Att’y Gen. No. 85-34.

RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 278 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 1030 et seq., 1040.

**20-2-1075. Use of county and independent school buses for students participating in recreational or educational activities.**

Notwithstanding any other provisions of law to the contrary, including Code Sections 20-2-188 and 20-2-411, county and independent school systems may use school buses to provide transportation to students and others to attend summer camps or to participate in other recreational or educational activities if the cost of such transportation and of any additional insurance costs deemed reasonably necessary by the school system are reimbursed in full from public or private funds other than public school funds. (Code 1981, § 20-2-1075, enacted by Ga. L. 1990, p. 917, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

**Lease of buses to Olympic committee.** — Local and independent school systems are authorized to lease school buses to the Atlanta Committee for the Olympic

Games for the purpose of transporting the public to the Olympic venues. 1995 Op. Att’y Gen. No. 95-41.

## PART 2

## INSURANCE

**Cross references.** — Motor vehicle accident insurance generally, T. 33, C. 34.

**20-2-1090. Accident insurance for children on school buses.**

The various school boards of the counties, cities, and independent school systems employing school buses are authorized and required to cause policies of insurance to be issued insuring the school children riding therein to and from school against bodily injury or death at any time resulting from an accident or collision in which such buses are involved. The amount of such insurance shall be within the discretion of the respective boards. (Ga. L. 1949, p. 1155, § 1.)

**Law reviews.** — For survey article on insurance law, see 59 Mercer L. Rev. 195 (2007).

## JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 32-919, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Insurance authorized, but not required, for general public.** — While Ga. L. 1949, p. 1155, § 1 requires insurance to be taken out for the benefit of school children, Ga. L. 1949, p. 1155, § 3 merely authorizes that insurance be taken out for members of the general public, leaving this up to the board. *State Farm Mut. Auto. Ins. Co. v. Jones*, 98 Ga. App. 46, 104 S.E.2d 725 (1958).

**This is accident insurance, not liability insurance, and the question of negligence is not involved.** *State Farm Mut. Auto. Ins. Co. v. Jones*, 98 Ga. App. 46, 104 S.E.2d 725 (1958).

Regardless of the language of a contract of insurance covering the operation of school buses and taken out at the instance of school boards pursuant to this section, the insurance specially covering school children is accident insurance without regard to the negligence of anybody and the policy will, regardless of the policy's

terms, be construed in accordance with this section. *Jones v. State Farm Mut. Auto. Ins. Co.*, 100 Ga. App. 727, 112 S.E.2d 323 (1959) (see O.C.G.A. § 20-2-1090).

**Sovereign immunity waived to extent of insurance coverage.** — In regard to a personal injury action arising from an accident involving a school bus, the school district waived sovereign immunity to the extent the district was covered by liability insurance. *Coffee County Sch. Dist. v. King*, 229 Ga. App. 143, 493 S.E.2d 563 (1997).

**School authorities engaged in transporting children not liable for negligence.** — Transportation by authorities of a local school district, or the trustees of a local school district, of children to and from school by a motor bus makes accessible to the children the facilities of education authorized and provided for the children by law and is therefore a part of the operation of the school system, and the authorities, when engaged in this transportation, are in the operation of a governmental function and are therefore not liable in tort, either in the authorities official capacity, or as individuals, for any negligence, through themselves or the au-

thorities' agents, in the operation by the authorities of the motor bus which causes injuries to one of the school children while being transported to and from school. *Roberts v. Baker*, 57 Ga. App. 733, 196 S.E. 104 (1938) (decided under former Code 1933, § 32-919).

**Knowing employment of driver guilty of negligence not malice or willful and wanton conduct.** — Whether or not school authorities, in the operation of the school motor bus, notwithstanding that the authorities are engaged in the performance of a governmental function, would be liable for damages caused by the operation of the bus resulting from the authorities malicious acts or willful and wanton conduct in the operation of the bus, the employment by the authorities of a driver, who with their knowledge has been guilty of negligence or any conduct in the operation of the bus which caused injury to one of the passengers, does not constitute malice or willful and wanton conduct. *Roberts v. Baker*, 57 Ga. App. 733, 196 S.E. 104 (1938) (decided under former Code 1933, § 32-919).

**Insurance for students injuring other students not required.** — O.C.G.A. § 20-2-1090 did not require a school board to insure against injuries to a student resulting from an attack by another student on a school bus. *Payne v. Twiggs County Sch. Dist.*, 269 Ga. 361, 496 S.E.2d 690 (1998).

**No provisions require policy permitting direct action against insurance company.** — There are no statutory provisions which require the county boards of education to obtain policies of insurance that permit a direct action by the person injured against the insurance company. *Krasner v. American Guarantee & Liab. Ins. Co.*, 110 Ga. App. 468, 138 S.E.2d 921 (1964).

**Insurance company writing insurance in compliance with provisions of this section may be sued directly** on the contract of insurance by a member of the public who sustains damage to that individual's person or property resulting from the negligent operation of the school buses covered by the contract of insurance. *Krasner v. Harper*, 90 Ga. App. 128, 82 S.E.2d 267; *American Guarantee &*

*Liab. Ins. Co. v. Krasner*, 211 Ga. 142, 84 S.E.2d 46 (1954) (see O.C.G.A. § 20-2-1090).

When county or other boards of education take out the insurance described, the persons insured are beneficiaries; the beneficiaries' action is not against members of the school board, but is an action in contract directly against the insurance company on the theory of third-party beneficiaries. *State Farm Mut. Auto. Ins. Co. v. Jones*, 98 Ga. App. 46, 104 S.E.2d 725 (1958).

**Denial of insurer's summary judgment motion not moot.** — In an action against an insurer to recover damages under a policy issued to a county board of education on behalf of a child injured by a backfiring school bus, the insurer's appeal from the denial of the insurer's motion for summary judgment was not rendered moot by the subsequent entry of a verdict and a judgment in favor of the child in a trial limited to damages; the denial of the motion could be reviewed under O.C.G.A. § 5-6-34(d) as part of the insurer's direct appeal from the final judgment because the trial court's determination in denying the motion that the policy's medical payments provision did not satisfy O.C.G.A. § 20-2-1090 and that the policy's liability provision provided the requisite coverage was not considered at trial. *Coregis Ins. Co. v. Nelson*, 282 Ga. App. 488, 639 S.E.2d 365 (2006).

**No-fault coverage provided by policy's medical payments provision.** — In an action against an insurer to recover damages under a motor vehicle policy issued to a county board of education on behalf of a child injured by a backfiring school bus, the trial court erred in construing the policy's liability provision as providing the no-fault accident coverage mandated by O.C.G.A. § 20-2-1090 because the plain language of the policy showed that the policy's medical payments provision was intended to provide that coverage; the medical payments provision did not condition recovery on legal liability for damages, while the liability provision did impose such a condition on recovery, and if any coverage required by O.C.G.A. § 20-2-1090 was missing from the policy, the coverage should have been



read into the medical payments provision rather than the liability provision. *Coregis Ins. Co. v. Nelson*, 282 Ga. App. 488, 639 S.E.2d 365 (2006).

County school board's insurer was entitled to summary judgment in an action to recover damages under the insurer's policy on behalf of a child burned by a back-firing school bus because the child received the complete benefit of O.C.G.A. § 20-2-1090 when the insurer paid the \$5,000 limit of the policy's medical payments provision; that provision, and not a liability provision in the same policy with a coverage limit of \$1 million, provided the no-fault coverage mandated by O.C.G.A.

§ 20-2-1090. *Coregis Ins. Co. v. Nelson*, 282 Ga. App. 488, 639 S.E.2d 365 (2006).

**Cited in** *Cotton States Mut. Ins. Co. v. Keefe*, 215 Ga. 830, 113 S.E.2d 774 (1960); *Cotton States Mut. Ins. Co. v. Tabor*, 215 Ga. 884, 114 S.E.2d 24 (1960); *General Accident, Fire & Life Assurance Corp. v. Fountain*, 215 Ga. 897, 114 S.E.2d 120 (1960); *Schaefer v. Mayor of Athens*, 120 Ga. App. 301, 170 S.E.2d 339 (1969); *Sheley v. Board of Pub. Educ.*, 132 Ga. App. 314, 208 S.E.2d 126 (1974); *Rawls v. Bulloch County Sch. Dist.*, 223 Ga. App. 234, 477 S.E.2d 383 (1996); *Payne ex rel. Gleaton v. Twiggs County Sch. Dist.*, 127 F.3d 1407 (11th Cir. 1997).

## OPINIONS OF THE ATTORNEY GENERAL

**Local board cannot pay insurance premiums except under stated statutory conditions.** — It is clear that a local board of education cannot expend school money to pay the premiums on liability insurance except under the conditions and circumstances stated in Ga. L. 1949, p. 1155, §§ 1 and 2. 1957 Op. Att'y Gen. p. 116.

**Medical payment policy must provide for bodily injury and death coverage.** — Ordinary medical payment insurance does not satisfy the requirement of this section unless the policy provides for both bodily injury and death coverage. 1960-61 Op. Att'y Gen. p. 164 (see O.C.G.A. § 20-2-1090).

**Section's requirements read into policy.** — When the provisions of a policy of insurance issued pursuant to this section read contrary to the requirements of this section, the requirements are read into the policy by operation of law.

1960-61 Op. Att'y Gen. p. 164 (see O.C.G.A. § 20-2-1090).

**District liable for injuries to extent that required insurance procured.** — School district is not liable in tort for injuries to students except to the extent that insurance has been procured therefor under Ga. L. 1949, p. 1155, §§ 1-5. 1960-61 Op. Att'y Gen. p. 166.

**Local board not required to obtain insurance for students riding local transit authority buses.** — Local board of education is not required by O.C.G.A. § 20-2-1090 to obtain accident and medical insurance to cover school children traveling to and from school on buses operated by a local transit authority on regularly scheduled routes with other fee paying passengers, even if such transportation is pursuant to a contract between the local board of education and the local transit authority. 1989 Op. Att'y Gen. U89-11.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 28.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 687 et seq.

78A C.J.S., Schools and School Districts, § 1065.

**ALR.** — Risks and causes of loss within

liability policy covering transportation of school children, 154 ALR 1102.

Tort liability of public schools and institutions of higher learning for accidents associated with the transportation of students, 23 ALR5th 1.

**20-2-1091. Payment of insurance premiums by school board or other bus owner.**

Where a bus is owned by the school board, the board shall pay the premium for insurance issued under Code Section 20-2-1090. Where the bus is not owned by the board, the premium shall be paid by the owner. (Ga. L. 1949, p. 1155, § 2.)

**JUDICIAL DECISIONS**

**Cited** in *Sheley v. Board of Pub. Educ.*, 132 Ga. App. 314, 208 S.E.2d 126 (1974).

**OPINIONS OF THE ATTORNEY GENERAL**

**Local board cannot pay insurance premiums except under stated statutory conditions.** — It is clear that a local board of education cannot expend school money to pay the premiums on liability insurance except under the conditions and circumstances stated in Ga. L. 1949, p. 1155, §§ 1 and 2. 1957 Op. Att'y Gen. p. 116.

**District liable for injuries to extent that required insurance procured.** — School district is not liable in tort for injuries to students except to the extent that insurance has been procured therefor under Ga. L. 1949, p. 1155, §§ 1-5. 1960-61 Op. Att'y Gen. p. 166.

**20-2-1092. Insurance coverage for general public; waiver of school board's immunity.**

The various school boards are authorized to cause a provision to be inserted in policies issued under Code Section 20-2-1090 insuring the members of the general public against personal injury or death or damage to property resulting from the negligent operation of the school buses. Nothing, however, in this part shall be construed as imposing legal liability upon such boards on account of such accidents. Wherever an insurance company issues a policy containing such a provision, the company shall be estopped to deny its liability thereunder on account of the nonliability of the school board. (Ga. L. 1949, p. 1155, § 3; Ga. L. 1992, p. 6, § 20.)

**JUDICIAL DECISIONS**

**Boards of education are authorized, but not required, to insure members of the general public** against personal injury, death, or damage to property resulting from the negligent operation of school buses and nothing shall be construed as imposing legal liability upon the boards on account of such accidents.

*Jones v. State Farm Mut. Auto. Ins. Co.*, 100 Ga. App. 727, 112 S.E.2d 323 (1959).

**This is accident insurance, not liability insurance, and the question of negligence is not involved.** *State Farm Mut. Auto. Ins. Co. v. Jones*, 98 Ga. App. 46, 104 S.E.2d 725 (1958).

**General Assembly has recognized**

the governmental immunity of a school board in a tort action and disclaimed any intent to change that. The General Assembly provided for the bringing of a suit for an injury so inflicted, but limited recovery to the amount of liability provided in the policy. *Sheley v. Board of Pub. Educ.*, 132 Ga. App. 314, 208 S.E.2d 126 (1974), cert. dismissed, 233 Ga. 487, 212 S.E.2d 627 (1975).

**Insurance company writing insurance in compliance with this section may be sued directly** on the contract by a member of the public who sustains damage to the individual's person or property resulting from the negligent operation of the school buses covered by the contract.

*Krasner v. Harper*, 90 Ga. App. 128, 82 S.E.2d 267, aff'd, *American Guarantee & Liab. Ins. Co. v. Krasner*, 211 Ga. 142, 84 S.E.2d 46 (1954) (see O.C.G.A. § 20-2-1092).

When county or other boards of education take out the insurance described, the persons insured are beneficiaries; the beneficiaries' action is not against the members of the school board, but is an action in contract directly against the insurance company on the theory of third-party beneficiaries. *State Farm Mut. Auto. Ins. Co. v. Jones*, 98 Ga. App. 46, 104 S.E.2d 725 (1958).

**Cited** in *Cotton States Mut. Ins. Co. v. Keefe*, 215 Ga. 830, 113 S.E.2d 774 (1960).

### OPINIONS OF THE ATTORNEY GENERAL

**District liable for injuries to extent that required insurance procured.** — School district is not liable in tort for injuries to students except to the extent

that insurance has been procured therefor under Ga. L. 1949, p. 1155, §§ 1 through 5. 1960-61 Op. Att'y Gen. p. 166.

### RESEARCH REFERENCES

**ALR.** — Risks and causes of loss within liability policy covering transportation of school children, 154 ALR 1102.

Tort liability of public schools and insti-

tutions of higher learning for accidents associated with the transportation of students, 23 ALR5th 1.

### 20-2-1093. Mutual insurance policies to be nonassessable.

Any policy authorized by this part, when issued by a mutual insurance company, shall be nonassessable as to further premiums, and the policy shall so state. (Ga. L. 1949, p. 1155, § 4; Ga. L. 1992, p. 6, § 20.)

### JUDICIAL DECISIONS

**Cited** in *Sheley v. Board of Pub. Educ.*, 132 Ga. App. 314, 208 S.E.2d 126 (1974).

### OPINIONS OF THE ATTORNEY GENERAL

**District liable for injuries to extent that required insurance procured.** — School district is not liable in tort for injuries to students except to the extent

that insurance has been procured therefor under Ga. L. 1949, p. 1155, §§ 1 through 5. 1960-61 Op. Att'y Gen. p. 166.



20-2-1094. School boards to keep insurance policies.

Policies issued under Code Section 20-2-1090 shall be filed with and retained by the respective school boards for the benefit of the school children patronizing the school buses and for the benefit of the general public. (Ga. L. 1949, p. 1155, § 5; Ga. L. 1985, p. 149, § 20.)

JUDICIAL DECISIONS

**Insurance company writing insurance in compliance with this section** may be sued directly on the contract by a member of the public who sustains damage to the individual's person or property resulting from the negligent operation of the school buses covered by the contract.

Krasner v. Harper, 90 Ga. App. 128, 82 S.E.2d 267, aff'd, American Guarantee & Liab. Ins. Co. v. Krasner, 211 Ga. 142, 84 S.E.2d 46 (1954) (see O.C.G.A. § 20-2-1094).

Cited in Sheley v. Board of Pub. Educ., 132 Ga. App. 314, 208 S.E.2d 126 (1974).

OPINIONS OF THE ATTORNEY GENERAL

**District liable for injuries to extent that required insurance procured.** — School district is not liable in tort for injuries to students except to the extent

that insurance has been procured therefor under Ga. L. 1949, p. 1155, §§ 1 through 5. 1960-61 Op. Att'y Gen. p. 166.

PART 3

SICK LEAVE FOR SCHOOL BUS DRIVERS

20-2-1110. Right of school bus driver to sick leave with pay; accumulation of unused sick leave.

- (a) Each person employed as a school bus driver in any public school of this state shall be entitled to sick leave with full pay computed on the basis of one and one-fourth working days for each completed school month of service, such leave to be cumulative over each school year; and all unused sick leave shall be accumulated from one school year to the next up to the maximum of 45 days. A school bus driver may utilize sick leave, upon the approval of the school superintendent of the county in which such school bus driver is employed, for absence due to illness or injury or necessitated by exposure to contagious disease in which the health of others would be endangered by his attendance on duty or due to illness or death in the school bus driver's immediate family. School bus drivers shall be charged with sick leave for absence only on days upon which they would otherwise work, and no charge against sick leave shall be made for absence on Sundays, holidays, or other nonworkdays.
- (b) Any unused sick leave accumulated by a school bus driver pursuant to the provisions of subsection (a) of this Code section shall be

credited to such driver and shall be transferred when there is a change in the employment of the school bus driver from one local board of education to another, but no local board of education shall be required to transfer funds to another, nor shall the State Board of Education provide funds to a local unit of administration beyond those authorized by subsection (j) of Code Section 20-2-188 to finance the potential or actual cost incurred by a local unit of administration through the employment of school bus drivers transferring accumulated unused sick leave. Any unused sick leave credited to a school bus driver shall be forfeited if the driver withdraws from service for more than 24 consecutive months. (Ga. L. 1962, p. 670, § 1; Ga. L. 1980, p. 2001, § 1; Ga. L. 1989, p. 592, § 1.)

#### OPINIONS OF THE ATTORNEY GENERAL

**Local boards of education have authority to pay employees on account of sickness.** — 1981 Op. Att'y Gen. No. 81-14.

**Rate of pay while sick is same as if**

**present.** — O.C.G.A. §§ 20-2-850 and 20-2-1110 allow local boards to pay employees on account of sickness at the same rate as the employees are paid if present for work. 1981 Op. Att'y Gen. No. 81-14.

#### **20-2-1111. Use of accumulated sick leave for personal reasons.**

During any school year, a school bus driver may utilize up to a maximum of three days of any accumulated sick leave for the purpose of absenting himself from his duties for any personal reason if prior approval of his absence is given by the local school superintendent or his authorized representative. (Ga. L. 1972, p. 488, § 1.)

#### **20-2-1112. Driver on sick leave need not pay for substitute.**

No school bus driver utilizing sick leave under this part shall be required to pay the cost of employing a substitute school bus driver to serve in his absence on such sick leave. (Ga. L. 1962, p. 670, § 3.)

#### **20-2-1113. Determining pay for substitute drivers.**

The scale of pay for substitute drivers shall be determined by the board of education of each system in which a school bus driver utilizing sick leave under this part is employed. (Ga. L. 1962, p. 670, § 2.)

#### PART 4

#### RANDOM DRUG TESTING FOR SCHOOL BUS DRIVERS

**Cross references.** — Drug free workplace programs, T. 34, C. 9, A. 11.

**20-2-1120. Definition.**

As used in this part the term “illegal drugs” shall include marijuana as defined in paragraph (16) of Code Section 16-13-21, a controlled substance as defined in paragraph (4) of Code Section 16-13-21, a dangerous drug as defined in Code Section 16-13-71, or any other controlled substance or dangerous drug that persons are prohibited by state or federal law from using, but shall not include any drug when used pursuant to a valid medical prescription or when used as otherwise authorized by state or federal law. (Code 1981, § 20-2-1120, enacted by Ga. L. 1994, p. 846, § 1.)

**RESEARCH REFERENCES**

**ALR.** — Supreme Court’s views on mandatory testing for drugs or alcohol, 145 ALR Fed. 335.

**20-2-1121. School bus drivers subject to random drug and alcohol testing; procedures; costs; rules and regulations.**

(a) All persons employed as school bus drivers by any public school system in this state shall be subject to random testing for evidence of use of illegal drugs. Not less than 50 percent of the school bus drivers in each public school system shall be tested annually in one or more random tests. Such testing shall be noninvasive and may be conducted at any time during the calendar year, and the cost of all such testing shall be borne by the state, provided that, in the case of drivers whose salaries are exclusively funded by the local school system, the cost of such testing shall be borne by such local school system; and provided, further, that, in the case of drivers employed by private companies who have contracted to provide school bus service to a county school system or an independent school system, the cost of such testing shall be borne by such private company. If the drug test shows the presence of drugs in the employee’s system, the results of the test will be confirmed using an alternative method but the same urine sample.

(b) All persons employed as school bus drivers by any public school system in this state shall be subject to random testing for evidence of use of alcohol during the school day which testing may be carried out at any time within the school year and the cost of which shall be borne by the local board of education.

(c) The State Board of Education shall adopt rules and regulations to establish for purposes of testing and retesting for illegal drugs:

(1) Which illegal drugs will be the subject of testing;

(2) Methods for assuring minimal privacy intrusions during collection of body fluid specimens for such testing;



- (3) Methods for assuring proper storage, transportation, and handling of such specimens in order to ensure the integrity of the testing process;
- (4) The identity of those persons entitled to the results of such tests and methods for ensuring that only authorized persons are given access to such results;
- (5) A list of laboratories qualified to conduct established drug tests; and
- (6) Procedures for school bus drivers, prior to the collection of body fluid specimens for such testing, to provide information to their employers regarding use of any drug pursuant to a medical prescription or as otherwise authorized by law which may affect the results of such test.
- (d) The local boards of education shall adopt rules and regulations to establish for the random testing for the presence of alcohol:
- (1) The portion of drivers in any school system that shall be selected for testing at each testing period;
- (2) Methods for assuring that drivers are selected on a random basis;
- (3) Methods for assuring minimal privacy intrusions during such testing;
- (4) Methods for assuring proper storage, transportation, and handling of such specimens in order to ensure the integrity of the testing process;
- (5) Methods for the testing of the breath of school bus drivers for the presence of alcohol, such testing to be done by a peace officer or law enforcement agency;
- (6) The identity of those persons entitled to the results of such tests and methods for ensuring that only authorized persons are given access to such results; and
- (7) A list of laboratories qualified to conduct such alcohol testing.
- (e) The State Board of Education shall be authorized to adopt any other rules or regulations it deems necessary to implement testing for illegal drug use under this part. The local boards of education shall be authorized to adopt any other rules or regulations deemed necessary to implement random testing for alcohol use under this part.
- (f) Any rules or regulations adopted pursuant to this part shall be in compliance with Parts 40 and 382 of Title 49 of the Code of Federal Regulations. (Code 1981, § 20-2-1121, enacted by Ga. L. 1994, p. 846, § 1.)

**20-2-1122. Penalties for violation or refusal to submit to test.**

(a) A school bus driver found to have used an illegal drug shall be terminated from his or her employment.

(b) A school bus driver found to have any measurable alcohol in his or her system during the school day shall be subject to disciplinary action at the discretion of the local board of education.

(c) A school bus driver who refuses to provide body fluid, when requested to do so in accordance with drug testing or random alcohol testing conducted pursuant to this part and rules and regulations promulgated under this part, shall be terminated from employment. (Code 1981, § 20-2-1122, enacted by Ga. L. 1994, p. 846, § 1.)

**PART 5****SCHOOL BUSES**

**Cross references.** — Operation of § 5, not codified by the General Assembly, school buses, § 40-6-165. provides that: "This part shall be known

**Editor's notes.** — Ga. L. 2004, p. 621, and may be cited as 'Aleana's Law.'"

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 57 Am. Jur. 2d, Municipal, County, School, and State Tort Liability, § 590.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 1053 et seq.

**20-2-1125. Annual mandatory training of school bus drivers; initial certification of drivers.**

All persons employed as school bus drivers by any public school system in this state shall receive annual mandatory training on traffic laws pertaining to the operation of school buses and on school bus operations and safety. The State Board of Education shall establish the content and length of initial driver training and shall determine the qualifications of and certify the instructors who conduct such training. No person employed as a school bus driver by any public school system in this state shall operate a school bus unless such person has completed such training within the preceding 12 month period. (Code 1981, § 20-2-1125, enacted by Ga. L. 2004, p. 621, § 6.)

**20-2-1126. Written policies and procedures for operation of school buses; receipt of code of conduct by students; acknowledgement by parent or guardian.**

(a) Each public school system in this state shall promulgate policies and procedures for the operation of school buses and the conduct and

safety of those students who ride such buses. Such policies and procedures shall be in writing and available for public inspection. Each person employed as a school bus driver shall acknowledge in writing that he or she has received a copy of and has read and understands such policies and procedures. In the event that such policies and procedures are amended during the school year, such amended policies and procedures shall be provided to all persons employed by the school system as school bus drivers, and each such person shall acknowledge in writing that he or she has received a copy of and has read and understands such amended policies and procedures.

(b) At the beginning of each school year, each public school system in this state shall provide each of its students with a copy of the school system's code of conduct as required by Code Section 20-2-736. In the event such code of conduct is amended during the school year, the school system shall provide copies of such amendments to the students. The receipt of such student code of conduct shall be acknowledged in writing by a parent or guardian of each student. (Code 1981, § 20-2-1126, enacted by Ga. L. 2004, p. 621, § 6; Ga. L. 2005, p. 60, § 20/HB 95.)

#### **20-2-1127. Schedule of school bus routes.**

Reserved. Repealed by Ga. L. 2006, p. 851, § 3.1/SB 413, effective July 1, 2006.

**Editor's notes.** — This Code section was based on Code 1981, § 20-2-1127, enacted by Ga. L. 2004, p. 621, § 6.

### **ARTICLE 23**

#### **TRAFFIC SAFETY**

#### **20-2-1130. Duties of law enforcement and school officials as to traffic safety around schools.**

The local law enforcement agency charged with the responsibility for law enforcement within the school district attendance area and the board of education of each county and independent school system of this state shall study and evaluate the traffic safety requirements of the school system and the various individual schools therein. The responsible law enforcement agency shall take appropriate action to identify school safety crossings and motor vehicle traffic patterns on and around school grounds. The traffic safety officer of the local law enforcement agency shall advise the school board and the school superintendent relative to compliance by the school system with state laws and policies and regulations of the state agencies requiring safety standards and practices. (Ga. L. 1975, p. 820, § 1.)



## JUDICIAL DECISIONS

**School crossing guards.** — Local school district may use public education funds for school crossing guards because a crossing guard program might properly be determined necessary or incidental to the support and maintenance of public schools and public education. *Russell v. Fletcher*, 244 Ga. 854, 262 S.E.2d 138 (1979).

**County is not required by any statute of this state to provide school crossing guards.** *Russell v. Fletcher*, 244 Ga. 854, 262 S.E.2d 138 (1979); *McLaughlin v. City of Roswell*, 161 Ga. App. 759, 289 S.E.2d 18 (1982).

**Since a city failed to conclusively refute the plaintiffs' allegation of a nuisance,** the dangerous condition created by the city's failure, following the absence of the regular school crossing guard, whom the city had provided ever since the school in question had first opened, to provide a substitute crossing guard or to inform the public of the lack of such a guard — a material issue remained and the city's motion for summary judgment should have been denied. *Whiddon v. O'Neal*, 171 Ga. App. 636, 320 S.E.2d 601 (1984).

**20-2-1131. Direction of traffic by school-crossing guards.**

Any person who is a school-crossing guard designated by a local law enforcement agency shall be authorized to direct and regulate the flow of traffic at school crossings or within a reduced speed school zone during the time when such school-crossing guard is on duty. (Code 1981, § 20-2-1131, enacted by Ga. L. 1989, p. 516, § 1.)

## ARTICLE 24

## ELIMINATION OF ADULT ILLITERACY

**20-2-1140 and 20-2-1141.**

Repealed by Ga. L. 1988, p. 1252, § 1, effective July 1, 1988.

**Editor's notes.** — Code Sections 20-2-1140 and 20-2-1141, pertaining to adult illiteracy, were based on Ga. L. 1919, p. 253, §§ 4, 5; Ga. L. 1931, p. 7, § 94;

Code 1933, §§ 32-2401, 32-2402; Ga. L. 1943, p. 241, § 1. For present provisions concerning adult literacy programs, see Code Section 20-4-15.

## ARTICLE 25

## SCHOOL LAW TRIBUNALS; APPEALS

**20-2-1160. Local boards to be tribunals to determine school law controversies; appeals; special provisions for disabled children.**

(a) Every county, city, or other independent board of education shall constitute a tribunal for hearing and determining any matter of local controversy in reference to the construction or administration of the school law, with power to summon witnesses and take testimony if necessary. When such local board has made a decision, it shall be

binding on the parties; provided, however, that the board shall notify the parties in writing of the decision and of their right to appeal the decision to the State Board of Education and shall clearly describe the procedure and requirements for such an appeal which are provided in subsection (b) of this Code section.

(b) Any party aggrieved by a decision of the local board rendered on a contested issue after a hearing shall have the right to appeal therefrom to the State Board of Education. The appeal shall be in writing and shall distinctly set forth the question in dispute, the decision of the local board, and a concise statement of the reasons why the decision is complained of; and the party taking the appeal shall also file with the appeal a transcript of testimony certified as true and correct by the local school superintendent. The appeal shall be filed with the superintendent within 30 days of the decision of the local board, and within ten days thereafter it shall be the duty of the superintendent to transmit a copy of the appeal together with the transcript of evidence and proceedings, the decision of the local board, and other matters in the file relating to the appeal to the state board. The state board shall adopt regulations governing the procedure for hearings before the local board and proceedings before it.

(c) Where an appeal is taken to the state board, the state board shall notify the parties in writing of its decision within 25 days after hearing thereon and of their right to appeal the decision to the superior court of the county wherein the local board of education is located and shall clearly describe the procedure and requirements for such an appeal which are provided in this subsection and in subsection (d) of this Code section. Any party aggrieved thereby may appeal to the superior court of the county wherein the local board of education is situated. Such appeal shall be filed in writing within 30 days after the decision of the state board. Within ten days after filing of such appeal, it shall be the duty of the State School Superintendent to transmit to the superior court a copy of the record and transcript sent up from the local board as well as the decision and any order of the state board, certified as true and correct.

(d) The following form shall be sufficient for an appeal:

“In re \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ hereby appeals to the \_\_\_\_\_ from  
the decision of \_\_\_\_\_ rendered in the above-stated  
matter on \_\_\_\_\_.  
This \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.”

(e) Neither the state board nor the superior court shall consider any question in matters before the local board nor consider the matter de novo, and the review by the state board or the superior court shall be confined to the record. In the superior court, the appeal shall be determined by the judge sitting without a jury.

(f) The procedures provided in subsections (a) through (e) of this Code section shall not be applicable to disabled children when a hearing is necessary to decide a complaint made under the federal Education for All Handicapped Children Act of 1975. The state board shall promulgate by rules and regulations an impartial due process procedure for hearing and determining any matter of local controversy in reference to the construction or administration of the school law with respect to disabled children as such term is defined by the state board. Any tribunal which the state board shall empower to hear such cases shall have the power to summon witnesses and take testimony as such tribunal deems it necessary. In promulgating such rules and regulations, the state board shall consult with local boards of education and other local school officials in order to establish procedures required by this subsection which will coordinate, to the extent practicable, with the administrative practices of such local boards. (Ga. L. 1919, p. 288, § 85; Code 1933, § 32-910; Ga. L. 1947, p. 1189, §§ 1, 3a; Ga. L. 1961, p. 39, § 1; Ga. L. 1969, p. 708, § 1; Ga. L. 1977, p. 875, § 1; Ga. L. 1980, p. 1508, § 1; Ga. L. 1986, p. 216, § 1; Ga. L. 1992, p. 6, § 20; Ga. L. 1993, p. 1279, § 13.1; Ga. L. 1995, p. 1302, § 14; Ga. L. 1999, p. 81, § 20.)

**Cross references.** — Administration of oaths in conducting investigations before school tribunals, § 20-2-111.

**U.S. Code.** — The federal Education for All Handicapped Children Act of 1975,

referred to in subsection (f), is codified at 20 U.S.C. § 1411 et seq.

**Law reviews.** — For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986).

JUDICIAL DECISIONS

ANALYSIS

- GENERAL CONSIDERATION
- CONSTITUTIONALITY
- PROCEEDINGS BEFORE LOCAL BOARDS
- APPEAL TO STATE BOARD
- JUDICIAL PROCEEDINGS

General Consideration

**Editor’s notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1910, §§ 1551(14) and 1551(90), and former Ga. L. 1937, p. 864, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the

annotations for this Code section.

**“Local controversy” construed.** — Dispute as to whether an audit of a school board’s financial affairs by the State Department of Audits complied with a local act requiring the audit to be performed by a private accounting firm was not a “local controversy” involving school law because



**General Consideration (Cont'd)**

the dispute involved neither the administration of the schools nor the rights of the individuals within the schools. Rather, it involved a purported legal duty placed upon the board by law. Glynn County Bd. of Educ. v. Lane, 261 Ga. 544, 407 S.E.2d 754 (1991).

**Liability of state for segregation activities of local schools.** — State is not strictly liable for any alleged unlawful segregation activities by local schools. However, the state has continuing authority and an obligation to insure that local education agencies have completely eliminated all vestiges of the dual system and have not adopted practices that will cause racial separation. Georgia State Conference v. Georgia, 570 F. Supp. 314 (S.D. Ga. 1983).

**Applicability of Superior Court Rules.** — Rule 25 of the Uniform Superior Court Rules, regarding recusal, does not apply to school board proceedings under O.C.G.A. § 20-2-1160 because that rule addresses pre-hearing matters. Johnson v. Pulaski County Bd. of Educ., 231 Ga. App. 576, 499 S.E.2d 345 (1998).

**Recusal required for due process.** — President of the school board, who recommended the principal's removal from that capacity, should have been recused from participation in the school board's hearing on the matter and the board's failure to recuse the president denied the principal due process. Johnson v. Pulaski County Bd. of Educ., 231 Ga. App. 576, 499 S.E.2d 345 (1998).

**Cited in** Keever v. Board of Educ., 188 Ga. 299, 3 S.E.2d 886 (1939); Davis v. Haddock, 191 Ga. 639, 13 S.E.2d 657 (1941); Guy v. Nelson, 202 Ga. 728, 44 S.E.2d 775 (1947); Walker v. McKenzie, 209 Ga. 653, 74 S.E.2d 870 (1953); Irwin v. Crawford, 210 Ga. 222, 78 S.E.2d 609 (1953); Morman v. Pritchard, 108 Ga. App. 247, 132 S.E.2d 561 (1963); Stell v. Savannah-Chatham County Bd. of Educ., 333 F.2d 55 (5th Cir. 1964); Moore v. Crouse, 393 F.2d 489 (10th Cir. 1968); Grimes v. Clark, 226 Ga. 195, 173 S.E.2d 686 (1970); Ken Stanton Music, Inc. v. Board of Educ., 227 Ga. 393, 181 S.E.2d 67 (1971); Fuller v. Williams, 150 Ga. App.

730, 258 S.E.2d 538 (1979); Hilton Constr. Co. v. Rockdale County Bd. of Educ., 245 Ga. 533, 266 S.E.2d 157 (1980); Wells v. Banks, 153 Ga. App. 581, 266 S.E.2d 270 (1980); Hogan v. Taylor County Bd. of Educ., 157 Ga. App. 680, 278 S.E.2d 106 (1981); Helms v. McDaniel, 657 F.2d 800 (5th Cir. 1981); Benton v. Gwinnett County Bd. of Educ., 168 Ga. App. 533, 309 S.E.2d 680 (1983).

**Constitutionality**

**Constitutionality of section.** — See Lott v. Board of Educ., 164 Ga. 863, 139 S.E. 722 (1927) (decided under former Code 1910, § 1551 (90)); Morman v. Pritchard, 108 Ga. App. 247, 132 S.E.2d 561 (1963).

**Fair Dismissal Act constitutional.** — The Fair Dismissal Act of Georgia, O.C.G.A. § 20-2-940 et seq., both on the Act's face and as applied, not only met, but exceeded, the minimum due process standard in a situation where a teacher who was to be terminated for cause opposed termination. Holley v. Seminole County Sch. Dist., 755 F.2d 1492 (11th Cir. 1985).

**Creation of school courts and tribunals.** — Under the Constitution of 1877, the legislature was authorized to create school courts or tribunals and confer jurisdiction on the courts or tribunals to hear and determine school controversies. Boatright v. Yates, 211 Ga. 125, 84 S.E.2d 195 (1954).

**Proceedings Before Local Boards**

**Jurisdiction of local boards of education.** — County board of education is the tribunal for hearing and determining all matters of local controversy in reference to the construction or administration of school law, but an appeal from the decisions of the board may be had to the State Board of Education. Pass v. Pickens, 204 Ga. 629, 51 S.E.2d 405 (1949).

This section grants to local boards of education the power to act as tribunals for hearing and determining any matter of local controversy concerning the construction or administration of school law and grants to any party aggrieved by a local decision the right to appeal to the State Board of Education and to the superior

court. *Sumter County Bd. of Educ. v. Mosley*, 147 Ga. App. 478, 249 S.E.2d 284 (1978) (see O.C.G.A. § 20-2-1160).

**Construction of “local controversy.”** — “Local controversy,” within the meaning of this section, refers only to disputes within one school system and not to those involving a contract between county boards of education. *Wilson v. Strange*, 235 Ga. 156, 219 S.E.2d 88 (1975) (see O.C.G.A. § 20-2-1160).

Term “local controversy” in subsection (a) of O.C.G.A. § 20-2-1160 refers to matters of controversy pertaining to or existing within one local school board as discrete from other school boards. *Bacon v. Brewer*, 196 Ga. App. 130, 395 S.E.2d 383 (1990).

**Suspension of teacher is a matter of “local controversy”** in reference to the construction or administration of school law, within the meaning of this section, and, if not appealed, is binding on the parties. *Pierce v. Beck*, 61 Ga. 413 (1878) (decided under former Code 1910, § 1551 (90)).

**Nonrenewal of single one-year contract.** — In most instances, the simple nonrenewal of a single, one-year contract, standing alone, as opposed to the nonrenewal of the contract of a “tenured” teacher or a breach of contract, will not constitute a “matter of local controversy in reference to the construction or administration of the school law.” *Dalton City Bd. of Educ. v. Smith*, 256 Ga. 394, 349 S.E.2d 458 (1986).

**Nonrenewal of assistant principal’s contract.** — When the school board has not admitted that the board let an assistant principal go for unlawful reasons and the petitioners have not presented any evidence to substantiate the petitioners’ claim that the assistant principal was not rehired as a result of an exercise of constitutionally protected activities, the petitioners have not shown any facts which would remove the decision to not renew the contract from the realm of policy into the realm of law. *Dalton City Bd. of Educ. v. Smith*, 256 Ga. 394, 349 S.E.2d 458 (1986).

**Action for breach of contract against a local board of education,** alleging that the plaintiff had been im-

properly dismissed from a coaching position, raised issues that were clearly matters of local controversy and clearly referred to the construction or administration of school law and, accordingly, no error was rendered by the trial court’s dismissal on the ground that administrative remedies (i.e., hearing before the local board with appeal to the State Board of Education) were not exhausted. *Arp v. Bremen Bd. of Educ.*, 171 Ga. App. 560, 320 S.E.2d 397 (1984).

**Local boards have freedom to adopt or ignore recommendations of Professional Practices Commission.** *Rabon v. Bryan County Bd. of Educ.*, 173 Ga. App. 507, 326 S.E.2d 577, cert. denied, 474 U.S. 855, 106 S. Ct. 160, 88 L. Ed. 2d 133 (1985).

**County board may fix area to be served by school and locate schoolhouse therein.** — County board of education is empowered by law to fix the area to be served by each public school and to locate the site of the schoolhouse therein as near the center of the area served as practicable, and such an action by the county board is final unless objections are filed. *Boney v. County Bd. of Educ.*, 203 Ga. 152, 45 S.E.2d 442 (1947).

**County board cannot determine contested election of school trustee.** — Under this section, a county board of education has no power or authority to hear and determine election contests growing out of the election of a school trustee (now appointed) within a local school district within a certain county in this state; the ordinary of the county (now judge of the probate court) wherein the contest may arise has jurisdiction to hear and determine the contest. *Ramsey v. Mingledorff*, 181 Ga. 803, 184 S.E. 322 (1936) (see O.C.G.A. § 20-2-1160).

**When teacher becomes “permanently elected,” teacher can only be removed for cause.** — When a teacher, having been employed for more than five years as the principal of a school, became “permanently elected” under the terms imposed by the Teacher Tenure Act of 1937, Ga. L. 1937, p. 1409, the teacher could not be suspended or removed except for cause and had the right to defend in a hearing before the local board. *County Bd.*



### Proceedings Before Local Boards (Cont'd)

of Educ. v. Young, 187 Ga. 644, 1 S.E.2d 739 (1939).

**Transfer to another school without cause or hearing allowed, provided no salary reduction.** — Board of education had the right merely to transfer a teacher from the position of principal to that of a teacher in another school without assigning a cause or a hearing, provided the board did not act merely arbitrarily and exercised the board's judgment as to what was best for the school system, and provided the board did not accompany the demotion with a reduction in salary. County Bd. of Educ. v. Young, 187 Ga. 644, 1 S.E.2d 739 (1939).

**Georgia Administrative Procedure Act does not apply to proceedings before local boards of education.** Hood v. Rice, 120 Ga. App. 691, 172 S.E.2d 170 (1969), cert. denied, 397 U.S. 1070, 90 S. Ct. 1514, 25 L. Ed. 2d 693 (1970).

**Board's decision final unless appeal taken.** — When sitting as a court to hear and determine an issue over which the board has jurisdiction, a decision of the school board is final unless an appeal therefrom is taken. Patterson v. Boyd, 211 Ga. 679, 87 S.E.2d 861 (1955).

**County board without power to sue and be sued.** — Artificial persons have only such powers as are conferred upon them by their creator, and county boards of education, creatures of the law, have not been clothed as such with the power to sue and be sued. Parker v. Board of Educ., 209 Ga. 5, 70 S.E.2d 369 (1952).

**Janitorial services contract not requiring exhaustion of administrative remedies.** — When the matter in dispute was a janitorial services contract, indistinguishable from similar contracts in the general realm of commercial activity, except that one of the parties to the contract was a school system, an action for breach of the contract by the school system was not "a local controversy in reference to the construction or administration of the school law," requiring exhaustion of administrative remedies under O.C.G.A. § 20-2-1160, although the school system claimed the contract was void under

O.C.G.A. § 20-2-504. Servicemaster Mgt. Servs. Corp. v. Cherokee County Sch. Sys., 257 Ga. 60, 354 S.E.2d 424 (1987).

**School board determines own agenda.** — Citizen was not entitled to a writ of mandamus directing a school board to place the citizen on the board's agenda because setting the agenda was a discretionary act that was not subject to mandamus and none of the statutes cited by the citizen, O.C.G.A. §§ 20-2-1160(a), 45-10-1, or 50-6-6(b), imposed a duty on the board to place the citizen on the board's agenda. James v. Montgomery County Bd. of Educ., 283 Ga. 517, 661 S.E.2d 535 (2008).

### Appeal to State Board

**Appeal right exists only when county board decides matter of local controversy.** — Right of appeal given in this section exists only when the county board of education has heard and decided some matter of local controversy in reference to the construction or administration of the school law and is confined to the parties to the controversy, but is not applicable to a direct proceeding brought against the board to compel the discharge of some official duty. Bryant v. Board of Educ., 156 Ga. 688, 119 S.E. 601 (1923) (decided under former Code 1910, § 1551 (14)).

**Both county and state boards tribunals with limited jurisdiction.** — Both the county board, for the purpose of the original trial, and the state board, for a trial on appeal, are by law made tribunals with limited jurisdiction. Boney v. County Bd. of Educ., 203 Ga. 152, 45 S.E.2d 442 (1947).

**County board bound by state board decision on education of handicapped.** — County board of education violates federal law by refusing to act on the findings of a state hearing officer that a handicapped child cannot receive an appropriate education in public school. Christopher N. v. McDaniel, 569 F. Supp. 291 (N.D. Ga. 1983).

**State board given jurisdiction of decision of county board sitting as court.** — In order for the State Board of Education to have jurisdiction of an appeal, the appeal must be from a decision of



the county board sitting as a court, not from a mere action of the board. *Mallard v. Warren*, 222 Ga. 731, 152 S.E.2d 380 (1966).

**Only the decisions of the county board made on disputed issues are appealable;** if there has been no issue heard and decided by the county board, there can be no parties and no testimony which the law authorizing an appeal contemplates. *Boney v. County Bd. of Educ.*, 203 Ga. 152, 45 S.E.2d 442 (1947).

Provisions of the law which specify the essentials of an appeal show that only the decisions of the county board made on disputed issues are appealable. If there has been no issue heard and decided by the county board, there can be no parties and no testimony which the law authorizing an appeal contemplates. *Owen v. Long County Bd. of Educ.*, 245 Ga. 647, 266 S.E.2d 461 (1980).

**State board restricted to testimony considered by county board.** — In requiring that the appeal contain the testimony heard by the county board, this section shows an intent that the state board is restricted at the hearing on appeal to the testimony previously considered by the county board; this would prohibit a *de novo* trial by the state board. *Boney v. County Bd. of Educ.*, 203 Ga. 152, 45 S.E.2d 442 (1947) (see O.C.G.A. § 20-2-1160).

**State board's decisions binding unless void.** — State Board of Education's decisions are binding upon parties who submit their causes to that tribunal through the orderly mode of procedure provided by law, unless the decisions are subject to be set aside because the decisions are void. *Maxey v. DeKalb County Bd. of Educ.*, 220 Ga. 158, 137 S.E.2d 657 (1964).

**State board not empowered to reconsider decisions.** — This section contains no express provision for reconsideration by the board of the board's decisions, and under a strict construction of the statutes relating to the State Board of Education this power may not be implied. *Murdock v. Perkins*, 219 Ga. 756, 135 S.E.2d 869 (1964) (see O.C.G.A. § 20-2-1160).

**Appeal not required.** — Tenured teacher was not required to appeal to the

state board of education; the Atlanta Public Schools' failure to grant the teacher a hearing on the nonrenewal of the teacher's teaching contract after a hearing was requested made such an appeal futile since such appeals were confined to the record and presupposed a hearing was held by the local board. *Atlanta Pub. Schs v. Diamond*, 261 Ga. App. 641, 583 S.E.2d 500 (2003).

### Judicial Proceedings

**State remedies for asserting rights may not be circumvented** simply by invoking 42 U.S.C. § 1983 in an action by school patrons against the county school board claiming that students were being denied an adequate education. *Deriso v. Cooper*, 246 Ga. 540, 272 S.E.2d 274 (1980).

Former tenured teacher failed to state a claim of a procedural due process violation under 42 U.S.C. § 1983 in the nonrenewal of a teaching contract because the teacher failed to utilize available state remedies under O.C.G.A. §§ 9-6-20, 20-2-940, 20-2-942(b), and 20-2-1160(a) through petitioning the board of education for a hearing or seeking mandamus relief. *Mason v. Clayton County Bd. of Educ.*, No. 08-16131, 2009 U.S. App. LEXIS 10491 (11th Cir. May 19, 2009) (Unpublished).

**School patrons claiming denial of adequate education** are relegated to pending federal court litigation, since it is inappropriate, because of the potential for conflicting orders, for state and federal courts to entertain simultaneously two cases contending that vestiges of the dual school system have not been eliminated. *Deriso v. Cooper*, 246 Ga. 540, 272 S.E.2d 274 (1980).

**Proper and timely filing of notice of appeal is an absolute requirement** to confer jurisdiction upon the appellate court. *Cooper v. Gwinnett County Bd. of Educ.*, 157 Ga. App. 289, 277 S.E.2d 285 (1981); *Elbert County Bd. of Educ. v. Gurley*, 215 Ga. App. 205, 450 S.E.2d 258 (1994).

When no notice of appeal was filed with the State Board of Education but, instead, appellant filed an appeal directly in the superior court, proper appellate procedure was not followed; and, therefore, the su-

**Judicial Proceedings (Cont'd)**

perior court did not have jurisdiction to review the decision sought to be appealed. *Cooper v. Gwinnett County Bd. of Educ.*, 157 Ga. App. 289, 277 S.E.2d 285 (1981); *Elbert County Bd. of Educ. v. Gurley*, 215 Ga. App. 205, 450 S.E.2d 258 (1994).

**When state board exercises judicial powers, certiorari available remedy.** — When the state board exercises the board's judicial powers in rendering a decision, a writ of certiorari is a remedy available. *Murdock v. Perkins*, 219 Ga. 756, 135 S.E.2d 869 (1964).

**Certiorari available directly to superior court from county board.** — Remedy of certiorari from a judicial decision of a county board of education is available directly to the superior court without first exhausting the authorized appeal to the State Board of Education. *Rockdale County Sch. Dist. v. Weil*, 245 Ga. 730, 266 S.E.2d 919 (1980).

**Alternate route for access to the superior court is certiorari from decision of local board of education.** *Deriso v. Cooper*, 246 Ga. 540, 272 S.E.2d 274 (1980).

**Plaintiff-high school principal had an adequate remedy at law as plaintiff** contended that the transfer was a demotion and not a reassignment as contended by the school superintendent. Such was a matter of local controversy in reference to the administration of school law; and, thus, the local board was the proper tribunal. *Emerson v. Bible*, 247 Ga. 633, 278 S.E.2d 382 (1981).

**Prerequisites to equitable relief.** — Barring extraordinary circumstances, exhaustion of statutory remedy of appeal is prerequisite to relief in equity. *Boatright v. Brown*, 222 Ga. 497, 150 S.E.2d 680 (1966).

When the controversy is a "local controversy," within the meaning of that term as used in this section, the plaintiffs are not entitled to resort to the extraordinary legal remedy of mandamus or to have equitable relief in the absence of a showing that the plaintiffs have exhausted the plaintiffs' administrative remedies or that the remedy provided by this section will not afford the plaintiffs adequate relief.

*Surrency v. Dubberly*, 225 Ga. 735, 171 S.E.2d 306 (1969) (see O.C.G.A. § 20-2-1160).

In the absence of extraordinary circumstances, the exhaustion of the remedy provided by this section for the resolution of local controversies in reference to the construction or administration of school laws is a prerequisite to relief in equity. *Deriso v. Cooper*, 246 Ga. 540, 272 S.E.2d 274 (1980) (see O.C.G.A. § 20-2-1160).

Before seeking equitable relief it is necessary that plaintiff-high school principal first exhaust administrative remedies and show the absence of an adequate remedy at law. *Emerson v. Bible*, 247 Ga. 633, 278 S.E.2d 382 (1981).

**Student must exhaust administrative remedies.** — When a student instituted suit against the superintendent of county schools and several high school officials, claiming that the student's civil rights had been violated when declared ineligible to play varsity basketball during the student's senior year in high school, since the student's claims were matters of local controversy and clearly related to the construction or administration of school law, the student was required to exhaust administrative remedies before instituting action in the courts. The student's failure to exhaust these remedies authorized the trial court to grant defendant's motion to dismiss. *Grayer v. Hagler*, 181 Ga. App. 662, 353 S.E.2d 545 (1987).

**If no "local controversy," exhaustion of administrative remedies not required.** — When the controversy is not a matter of "local controversy" in reference to the construction or administration of school law, an action for injunctive relief and damages against the board does not first require exhaustion of administrative remedies. *Eastwind Developers, Ltd. v. Board of Educ.*, 238 Ga. 587, 234 S.E.2d 504 (1977).

**When section's remedies not exhausted, resort to equity premature.** — When a plaintiff fails to exhaust the hearing and appeals remedy created by this section, or to indicate why this remedy at law is inadequate, a resort to equity for injunctive relief against a school board is premature. *Carter v. Board of Educ.*,



221 Ga. 775, 147 S.E.2d 315 (1966) (see O.C.G.A. § 20-2-1160).

Courts will not preempt the administrative remedy provided by O.C.G.A. § 20-2-1160 in the first instance except as a matter of equity when it is necessary to prevent irreparable injury, or when equity alone can grant adequate relief; the courts of equity will not interfere until and unless the administrative remedy has been exhausted and has failed to eliminate the violation of law or the gross abuse of discretion which is its equivalent, and this by way of appeal only. *Bacon v. Brewer*, 196 Ga. App. 130, 395 S.E.2d 383 (1990).

**Equity will not intervene.** — If no effort is made to exhaust one's administrative remedies, or an adequate remedy at law is available, equity will not intervene. *Otwell v. West*, 220 Ga. 95, 137 S.E.2d 291 (1964).

**Equity will not interfere with schools' management unless board has acted without authority of law.** *Patterson v. Boyd*, 211 Ga. 679, 87 S.E.2d 861 (1955).

**Discretion in local boards controls absent violations or gross abuse.** — Discretion has by law been vested in the county boards of education, and unless it is made clearly to appear that the board is acting in violation of the law or grossly abusing the boards' discretion, the boards' administration of the schools of the counties will not be enjoined by the courts. *Pass v. Pickens*, 204 Ga. 629, 51 S.E.2d 405 (1949).

Control and management of the public schools is in the county boards of education and will not be interfered with by the courts except in cases where that control and management is contrary to law. *Colston v. Hutchinson*, 208 Ga. 559, 67 S.E.2d 763 (1951).

Courts of equity will not interfere with the administration of the public school laws under which local controversies arise unless it is made clear to appear that the local school board is acting in violation of the law or is grossly abusing the board's discretion. *Walker v. McKenzie*, 209 Ga. 653, 74 S.E.2d 870 (1953).

Since the control and management of a county's public schools is vested by law in the county board of education, courts of

equity will not interfere with the control and management thereof, except when action taken by the board is contrary to law. *Warren v. Davidson*, 218 Ga. 25, 126 S.E.2d 221 (1962).

This section provides an adequate remedy for an aggrieved party and equity will not interfere with the action of the board of education of a county unless it appears that the board has acted without legal authority. *Davis v. Jarriel*, 223 Ga. 624, 157 S.E.2d 282 (1967) (see O.C.G.A. § 20-12-1160).

If the remedy provided by this section has not been exhausted, relief in equity is not available unless an act of the board violates some law or is such a gross abuse of discretion as amounts to a violation of the law. *Deriso v. Cooper*, 246 Ga. 540, 272 S.E.2d 274 (1980) (see O.C.G.A. § 20-12-1160).

**When statutory appeal remedy fails, or not adequate, equity grants relief.** — When the remedy by appeal from a decision of the local board has failed to eliminate the law violation, or the gross abuse of discretion which is its equivalent, equity will grant relief or, as is permissible in all cases to prevent irreparable injury, when equity alone can grant adequate relief, exhaustion of the statutory remedy of appeal is not a prerequisite to relief in equity. *Beddingfield v. Parkerson*, 212 Ga. 654, 94 S.E.2d 714 (1956) (decided under Ga. L. 1937, p. 864).

**Mandamus unavailable prior to exhaustion of administrative remedies.**

— Mandamus will not lie when it appears that the complainant has not availed himself or herself of the administrative remedies available under O.C.G.A. § 20-2-1160, which provides for an appeal to the State Board of Education from decisions concerning the termination of teachers pursuant to the Fair Dismissal Act, O.C.G.A. § 20-2-940 et seq. *Lansford v. Cook*, 252 Ga. 414, 314 S.E.2d 103 (1984).

**Mandamus against school board for restoration of teacher's former status not precluded.** — Even though it is true that this section has application to county school systems created by local law, such as that for Richmond County, and even though it is true that a proceeding by a



**Judicial Proceedings (Cont'd)**

teacher for restoration of former status as principal and former salary would be a controversy falling within the terms of this section, not even such a construction would preclude a direct proceeding by mandamus against the board of education to compel a proper discharge of official duty. *County Bd. of Educ. v. Young*, 187 Ga. 644, 1 S.E.2d 739 (1939) (see O.C.G.A. § 20-12-1160).

**Courts empowered to inquire into right to hold public office.** — Membership on a board of education is a public office. Nothing in this section is intended to take, or has the effect of taking from the courts of this state the power to inquire into the right to hold public office and to confer this important power upon the school boards. *Conley v. Brophy*, 207 Ga. 30, 60 S.E.2d 122 (1950) (see O.C.G.A. § 20-12-1160).

**Interlocutory injunction.** — Since for a breach of duty under former Code 1933, § 32-938, adequate remedies at law were available, it was error to grant an interlocutory injunction to prevent that breach upon a petition seeking an injunction, which was brought by residents and taxpayers of that portion of the county embraced within the school district. *Colston v. Hutchinson*, 208 Ga. 559, 67 S.E.2d 763 (1951).

**Judgment sustaining motion to dismiss petition seeking injunction proper.** — Judgment sustaining a demurrer (now motion to dismiss) to a petition seeking to have a county board of education enjoined from going forward with the board's program to establish a high school and erect a new high school building in and for a certain area of the county was proper since the petitioners had an adequate and complete remedy at law which the petitioners had not pursued, and since the petitioners had failed to appeal the board's decision alleging no sufficient reason for the failure to do so. *Boatright v. Yates*, 211 Ga. 125, 84 S.E.2d 195 (1954).

**Court may dismiss complaint if section's procedure not followed.** — If a county board of education seeks equitable and injunctive relief against a child and the parents for allegedly transporting the

child to another school district in disregard of the rules and regulations of the board, and it is nowhere shown in the record that the parties utilized the procedure provided in this section for determining matters of local controversy in regard to the administration of school law, either by holding a hearing at the county level or by appealing to the State Board of Education, the trial court may properly dismiss the complaint. *Wayne County Bd. of Educ. v. Anderson*, 231 Ga. 761, 204 S.E.2d 173 (1974) (see O.C.G.A. § 20-12-1160).

**Neither state board nor court is authorized to consider matter de novo from local board** because both sit as appellate bodies. *Ransom v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978).

As an appellate body, the superior court (like the State Board of Education) is not authorized to consider matters which were not raised before the local board. *Sharpley v. Hall County Bd. of Educ.*, 251 Ga. 54, 303 S.E.2d 9 (1983).

When a school principal argued that the language of O.C.G.A. § 20-2-940(a) is too vague, indefinite, and uncertain to meet due process requirements, but did not challenge the constitutionality of O.C.G.A. § 20-2-1160 in the proceedings before the Professional Practices Commission, the county board of education, or the State Board of Education, and this issue was not raised until the case was heard by the superior court, which sat as an appellate court, this constitutional issue was not timely raised by the principal and would not be considered on appeal to the Supreme Court. *Sharpley v. Hall County Bd. of Educ.*, 251 Ga. 54, 303 S.E.2d 9 (1983).

**Under subsection (e), on review, state board and superior court shall be confined to record.** Therefore, the superior court and the Court of Appeals, as well as the parties, are bound by this rule. *Sumter County Bd. of Educ. v. Mosley*, 147 Ga. App. 478, 249 S.E.2d 284 (1978) (see O.C.G.A. § 20-12-1160).

Superior court's review is on the record of the proceedings, and the any evidence rule applies. Additionally, school appeals are governed by the procedures set out in O.C.G.A. § 20-2-1160 and do not fall

within the Georgia Administrative Procedure Act, O.C.G.A. Ch. 13, T. 50. *Johnson v. Pulaski County Bd. of Educ.*, 231 Ga. App. 576, 499 S.E.2d 345 (1998).

**Court bound to affirm decision supported by sufficient evidence.** — Sitting as an appellate body, the superior court is placed in a position similar to an appellate review of a jury verdict. Finding that there exists evidence sufficient to support the decision of a local board, the superior court is bound to affirm the decision. *Ransum v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978).

Superior court erred in reversing a local school board's decision to terminate a teacher for insubordination and willful neglect of duty pursuant to O.C.G.A. § 20-2-940(a) because the decision was supported by evidence that the teacher made inappropriate comments about special education students, among other evidence. The "any evidence" standard of O.C.G.A. § 20-2-1160(e) applied. *Chattooga County Bd. of Educ. v. Searels*, 302 Ga. App. 731, 691 S.E.2d 629 (2010).

## OPINIONS OF THE ATTORNEY GENERAL

**County board empowered to select, locate, and acquire school sites.** — County board of education has the authority and power to select, locate, and acquire sites for school buildings in the county, according to the board's judgment and discretion, subject only to the approval or disapproval by the State Board of Education upon appeal. 1958-59 Op. Att'y Gen. p. 117.

**County board empowered to make changes and relocations in school sites.** — When a county board of education has previously selected sites for schools and school building projects, the board has the power to subsequently make changes and relocations of the sites, and when approved by the State Board of Education such action becomes final. 1958-59 Op. Att'y Gen. p. 117.

**County board may provide that no school bus shall transport pupils to unassigned attendance area.** — Under the general regulatory powers granted county boards of education, a county board, when the board deems it to be in the best interest and for the most efficient operation of the schools of the county, may by regulations duly adopted provide that no school bus under the jurisdiction of the board shall transport pupils to any attendance area other than areas to which the bus has been assigned by the board. 1950-51 Op. Att'y Gen. p. 272.

**Controversies related to "handi-**

**capped" children procedurally controlled by section.** — Controversies arising out of the construction and administration of laws pertaining to the education of "handicapped" children, just as controversies arising out of the construction and administration of school laws generally, are procedurally controlled with respect to hearings and appeals by this section. 1979 Op. Att'y Gen. No. 79-1 (decided under former Code 1933, § 32-910, prior to amendment by Ga. L. 1980, p. 1508, § 1, which added subsection (f)).

**Federal handicap provisions accept as proper those procedures contained in this section to assure "due process."** — 1979 Op. Att'y Gen. No. 79-1 (decided under former Code 1933, § 32-910, prior to amendment by Ga. L. 1980, p. 1508, § 1, which added subsection (f)).

**Procedure of using "regional hearing officer" and eliminating administrative appeal unauthorized.** — Procedure of using a "regional hearing officer" to conduct a hearing under this section and to eliminate any appeal to the State Board of Education is not only unauthorized by law but is in conflict with the "due process" guarantees of this section. 1979 Op. Att'y Gen. No. 79-1 (decided under former Code 1933, § 32-910, prior to amendment by Ga. L. 1980, p. 1508, § 1, which added subsection (f)).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 78 et seq., 246, 250.

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 196, 211 et seq., 406 et seq.

**ALR.** — Validity of statute or other regulations as to the use, or teaching, of

foreign languages in schools, 7 ALR 1695; 29 ALR 1452.

Validity of regulation by public school authorities as to clothes or personal appearance of pupils, 14 ALR3d 1201.

## ARTICLE 26

## OBTAINING SCHOOL MEALS BY FALSE INFORMATION

**20-2-1170. Providing false information to obtain free school meals for child; notice on forms; penalty.**

(a) It shall be unlawful for any person knowingly to provide false information on behalf of any school child in order to obtain school meals without charge or at a reduced price for such child or to fail to correct a false impression, if such person knows of such false impression, of an existing fact or set of circumstances which, if not corrected, would otherwise entitle such child to a meal without charge or at a reduced price.

(b) The forms used by any county or independent school system for the purpose of determining the qualifications for free school meals or school meals at a reduced price shall include thereon a statement that supplying false information in the completion of such form is a misdemeanor under Georgia law.

(c) Any person who shall violate this Code section shall be guilty of a misdemeanor. (Ga. L. 1976, p. 638, §§ 1-3.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 37 Am. Jur. 2d, Fraud and Deceit, §§ 11, 135, 305.

**C.J.S.** — 37 C.J.S., Fraud, §§ 1, 133.

## ARTICLE 27

## LOITERING AT OR DISRUPTING SCHOOLS

**20-2-1180. Loitering upon school premises or within a school safety zone; penalty; required check in of visitors; posting signs of required check in.**

(a) It shall be unlawful for any person to remain upon the premises or within the school safety zone as defined in paragraph (1) of subsection (a) of Code Section 16-11-127.1 of any public or private school in this state or to remain upon such premises or within such school safety



zone when that person does not have a legitimate cause or need to be present thereon. Each principal or designee of each public or private school in this state shall have the authority to exercise such control over the buildings and grounds upon which a school is located so as to prohibit any person who does not have a legitimate need or cause to be present thereon from loitering upon such premises. Each principal or designee of each public or private school in this state shall notify the appropriate law enforcement agency to prohibit any person who does not have a legitimate need or cause to be present therein from loitering within the school safety zone.

(b) Any person who:

(1) Is present upon the premises or within the school safety zone of any public or private school in this state and willfully fails to remove himself or herself from such premises after the principal or designee of such school requests him or her to do so; or

(2) Fails to check in at the designated location as required by subsection (c) of this Code section

shall be guilty of a misdemeanor of a high and aggravated nature.

(c) Upon entering any school building between the official starting time and the official dismissal time, any person who is not a student at such school, an employee of the school or school system, a school board member, an approved volunteer following the established guidelines of the school, or a person who has been invited to or otherwise authorized to be at the school by a principal, teacher, counselor, or other authorized employee of the school shall check in at the designated location as stated on posted signs and provide a reason for his or her presence at the school.

(c.1) Subsections (b) and (c) of this Code section shall not apply to:

(1) Law enforcement officers, firefighters, emergency medical technicians or paramedics, or any public safety or emergency management officials in the performance of an emergency call or to other persons making authorized deliveries to the school;

(2) Any person entering a school on election day, for purposes of voting, when the school serves as an official polling place; or

(3) Any person attending or participating in an academic or athletic event while remaining in the authorized area or a parent, grandparent, or guardian listed on a child's pick-up list who fails to sign-in while delivering school supplies, food, clothing, other legitimate business and who has not previously been sanctioned by school officials for disrupting a school.

(d) A school administrator or his or her designee may ask any visitor to explain his or her presence in the school building at any time when the school is in official session.

(e) If the school posts signs on entrances to the school requiring visitors to check in at the designated location, such signs shall be deemed prima-facie evidence that persons entering the school were on notice of the requirements of this Code section.

(f) Nothing in this Code section shall be construed to prohibit school administrators from prohibiting the admission of any person who has violated school policy or state law. (Ga. L. 1973, p. 719, §§ 1, 2; Ga. L. 1994, p. 1012, § 5; Ga. L. 2002, p. 1078, § 1; Ga. L. 2006, p. 519, § 4/HB 1302.)

**Cross references.** — Criminal penalty for failure to leave ground of public school when so directed, § 16-11-35.

**Editor's notes.** — Ga. L. 1994, p. 1012, § 1, not codified by the General Assembly, provides that the Act shall be known and may be cited as the "School Safety and Juvenile Justice Reform Act of 1994".

Ga. L. 1994, p. 1012, § 2, not codified by the General Assembly, sets forth legislative findings and determinations for the "School Safety and Juvenile Justice Reform Act of 1994".

Ga. L. 1994, p. 1012, § 29, not codified by the General Assembly, provides for severability.

Ga. L. 1994, p. 1012, § 30, not codified by the General Assembly, provides that the Act shall apply to all offenses committed on or after May 1, 1994.

Ga. L. 2006, p. 519, § 7/HB 1302, not codified by the General Assembly, provides that the amendment to this Code section shall become effective on July 1, 2006, and shall apply to all crimes committed on or after such date. Any offense committed before July 1, 2006, shall be punishable as provided by the statute in effect at the time the offense was committed.

## JUDICIAL DECISIONS

**Principal's authority to control visitors.** — O.C.G.A. § 20-2-1180 does not impart a ministerial duty on school officials, rather, the statute imposes a duty on third party visitors and gives school principals discretionary authority to control visitors. *Teston v. Collins*, 217 Ga. App. 829, 459 S.E.2d 452 (1995).

**Cited in** *Phillips v. State*, 240 Ga. 453, 241 S.E.2d 203 (1978); *Darnell v. Houston County Bd. of Educ.*, 234 Ga. App. 488, 506 S.E.2d 385 (1998); *In the Interest of M.P.*, 279 Ga. App. 344, 631 S.E.2d 383 (2006).

## OPINIONS OF THE ATTORNEY GENERAL

**Fingerprinting required for violators.** — Those charged with offenses un-

der O.C.G.A. § 20-2-1180 are to be fingerprinted. 2007 Op. Att'y Gen. No. 2007-1.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 75 Am. Jur. 2d, Trespass, § 168 et seq.

**ALR.** — Validity and construction of statute or ordinance forbidding unauthor-

ized persons to enter upon or remain in school building or premises, 50 ALR3d 340.

Validity, construction, and application of loitering statutes and ordinances, 72 ALR5th 1.

## 20-2-1181. Disrupting public school; penalty.

It shall be unlawful for any person to knowingly, intentionally, or recklessly disrupt or interfere with the operation of any public school, public school bus, or public school bus stop as designated by local school boards of education. Any person violating this Code section shall be guilty of a misdemeanor of a high and aggravated nature. (Ga. L. 1976, p. 480, § 1; Ga. L. 1994, p. 1012, § 6; Ga. L. 2004, p. 621, § 4; Ga. L. 2010, p. 516, § 3/SB 250.)

**The 2010 amendment**, effective May 27, 2010, inserted “knowingly, intentionally, or recklessly” near the beginning of this Code section. See the editor’s note for applicability.

**Editor’s notes.** — Ga. L. 1994, p. 1012, § 1, not codified by the General Assembly, provides that the Act shall be known and may be cited as the “School Safety and Juvenile Justice Reform Act of 1994.”

Ga. L. 1994, p. 1012, § 2, not codified by the General Assembly, sets forth legislative findings and determinations for the “School Safety and Juvenile Justice Reform Act of 1994.”

Ga. L. 1994, p. 1012, § 29, not codified by the General Assembly, provides for severability.

Ga. L. 1994, p. 1012, § 30, not codified by the General Assembly, provides that the Act shall apply to all offenses committed on or after May 1, 1994.

Ga. L. 2004, p. 621, § 9(b), not codified by the General Assembly, provides that

the amendment by that Act shall apply to offenses committed on or after July 1, 2004.

Ga. L. 2010, p. 516, § 1/SB 250, not codified by the General Assembly, provides: “It is the intent of the General Assembly that the model policy regarding bullying that is required to be promulgated by the Department of Education under this Act shall be utilized as a resource for the benefit of local school systems and shall not be used as a definition of the exclusive applicable standard of care in any civil or administrative action.”

Ga. L. 2010, p. 516, § 4/SB 250, not codified by the General Assembly, provides that the amendment of this Code section shall apply with respect to conduct on or after May 27, 2010, and conduct prior to that date shall continue to be governed by prior law.

**Law reviews.** — For survey article on education law for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 237 (2003).

## JUDICIAL DECISIONS

**No vagueness in statute.** — Phrase “disrupt or interfere with the operation of any public school” contains words of ordinary meaning that gives fair notice as to the application of O.C.G.A. § 20-2-1181; therefore, the statute is not vague. In re D.H., 283 Ga. 556, 663 S.E.2d 139 (2008).

**Evidence sufficient for conviction.** — Evidence that defendant and another student engaged in a fist fight just outside the front entrance of a public high school, that students were being dropped off to

start the school day at the time, that the altercation drew a large crowd of spectators, and that approximately four administrators and a police officer were required to stop the fight support defendant’s conviction for disrupting a public school. Pitts v. State, 260 Ga. App. 274, 581 S.E.2d 306 (2003).

Adjudication of a 13-year old student as a delinquent for disrupting a public school, in violation of O.C.G.A. § 20-2-1181, was upheld on appeal be-



cause the evidence established that the student disrupted a classroom while school was in session; the paraprofessional assigned to the classroom testified that the student was riling up the other children in the room to the point it was becoming uncontrollable. In the Interest of J.D., 288 Ga. App. 839, 655 S.E.2d 702 (2007).

Trial court properly found that a juvenile committed the delinquent offense of disrupting a public school under O.C.G.A. § 20-2-1181 due to the juvenile's boisterous, irate, and loud behavior in a classroom that caused the class to stop until the juvenile's removal and the juvenile's subsequent disruption of office staff with

similar behavior. In re D.H., 283 Ga. 556, 663 S.E.2d 139 (2008).

**Evidence insufficient for conviction.** — Evidence was insufficient to show a violation of O.C.G.A. § 20-2-1181, disruption of a public high school, because although the evidence showed that the beating took place at Washington County High School, there was no direct evidence that the school was in fact public, and the juvenile court did not take judicial notice of this fact. In the Interest of Q. S., 310 Ga. App. 70, 712 S.E.2d 99 (2011).

**Cited in** State v. Perry, 261 Ga. App. 886, 583 S.E.2d 909 (2003); In re L. E. N., 299 Ga. App. 133, 682 S.E.2d 156 (2009).

### OPINIONS OF THE ATTORNEY GENERAL

**Fingerprinting not required.** — Offense arising from a violation of O.C.G.A. § 20-2-1181 does not appear to be an

offense for which fingerprinting is required. 2010 Op. Att'y Gen. No. 10-6.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 75 Am. Jur. 2d, Trespass, § 168 et seq.

**ALR.** — Participation of student in

demonstration on or near campus as warranting expulsion or suspension from school or college, 32 ALR3d 864.

### 20-2-1182. Persons other than students who insult or abuse school teachers in presence of pupils may be ordered to leave school premises.

Any parent, guardian, or person other than a student at the public school in question who has been advised that minor children are present and who continues to upbraid, insult, or abuse any public school teacher, public school administrator, or public school bus driver in the presence and hearing of a pupil while on the premises of any public school or public school bus may be ordered by any of the above-designated school personnel to leave the school premises or school bus, and upon failure to do so such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$500.00. (Code 1981, § 20-2-1182, enacted by Ga. L. 1989, p. 1394, § 1; Ga. L. 2001, p. 4, § 20.)

### OPINIONS OF THE ATTORNEY GENERAL

**Fingerprinting for violators.** — Although the offense established by O.C.G.A. § 20-2-1182 does not appear to

be an offense for which fingerprinting is made mandatory by the provisions of O.C.G.A. § 35-3-33(1), this offense shall

be designated as an offense for which those charged with a violation must be fingerprinted to the extent the individual charged has attained the age of majority; to the extent the individual charged is a juvenile, this offense is not so designated at this time. 1989 Op. Att’y Gen. 89-52.

**20-2-1183. Possession of electronic communication devices in school.**

Reserved. Repealed by Ga. L. 2012, p. 358, § 39/HB 706 and Ga. L. 2012, p. 893, § 8/SB 289, effective July 1, 2012.

**Editor’s notes.** — This Code section L. 2000, p. 618, § 73; Ga. L. 2003, p. 307, was based on Code 1981, § 20-2-1183, § 1. enacted by Ga. L. 1989, p. 1394, § 2; Ga.

**20-2-1184. Reporting of students committing prohibited acts.**

(a) Any teacher or other person employed at any public or private elementary or secondary school or any dean or public safety officer employed by a college or university who has reasonable cause to believe that a student at that school has committed any act upon school property or at any school function, which act is prohibited by any of the following:

- (1) Code Section 16-5-21, relating to aggravated assault if a firearm is involved;
- (2) Code Section 16-5-24, relating to aggravated battery;
- (3) Chapter 6 of Title 16, relating to sexual offenses;
- (4) Code Section 16-11-127, relating to carrying a weapon or long gun in an unauthorized location;
- (5) Code Section 16-11-127.1, relating to carrying weapons at school functions or on school property or within school safety zones;
- (6) Code Section 16-11-132, relating to the illegal possession of a handgun by a person under 18 years of age; or
- (7) Code Section 16-13-30, relating to possession and other activities regarding marijuana and controlled substances,

shall immediately report the act and the name of the student to the principal or president of that school or the principal’s or president’s designee.

(b) The principal or designee who receives a report made pursuant to subsection (a) of this Code section who has reasonable cause to believe that the report is valid shall make an oral report thereof immediately by telephone or otherwise to the appropriate school system superintendent and to the appropriate police authority and district attorney.

(c) Any person participating in the making of a report or causing a report to be made as authorized or required pursuant to this Code section or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be immune from any civil or criminal liability that might otherwise be incurred or imposed, providing such participation pursuant to this Code section is made in good faith.

(d) Any person required to make a report pursuant to this Code section who knowingly and willfully fails to do so shall be guilty of a misdemeanor. (Code 1981, § 20-2-1184, enacted by Ga. L. 1990, p. 1834, § 1; Ga. L. 1994, p. 1012, § 7; Ga. L. 2010, p. 963, § 2-12/SB 308.)

**The 2010 amendment**, effective June 4, 2010, substituted “a weapon or long gun in an unauthorized location” for “deadly weapons at public gatherings” in paragraph (a)(4) and substituted “handgun” for “pistol or revolver” in the middle of paragraph (a)(6). See the editor’s note for applicability.

**Editor’s notes.** — Ga. L. 1994, p. 1012, § 1, not codified by the General Assembly, provided that the Act shall be known and may be cited as the “School Safety and Juvenile Justice Reform Act of 1994.”

Ga. L. 1994, p. 1012, § 2, not codified by the General Assembly, sets forth legislative findings and determinations for the “School Safety and Juvenile Justice Reform Act of 1994.”

Ga. L. 1994, p. 1012, § 29, not codified by the General Assembly, provides for severability.

Ga. L. 1994, p. 1012, § 30, not codified by the General Assembly, provides that the Act shall apply to all offenses committed on or after May 1, 1994.

Ga. L. 2010, p. 963, § 3-1/SB 308, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to all offenses committed on and after June 4, 2010, and shall not affect any prosecutions for acts occurring before June 4, 2010, and shall not act as an abatement of any such prosecution.

**Law reviews.** — For survey article on local government law, see 60 Mercer L. Rev. 263 (2008). For article, “Crimes and Offenses,” see 27 Ga. St. U. L. Rev. 131 (2011).

## OPINIONS OF THE ATTORNEY GENERAL

**Violation of section does not require fingerprinting.** — Violation of O.C.G.A. § 20-2-1184 is not, at this time,

designated as an offense for which those charged with a violation are to be fingerprinted. 1990 Op. Att’y Gen. No. 90-22.

## JUDICIAL DECISIONS

**Failure to report assault on a student.** — Appellate court’s reversal of a grant of judgment on the pleadings to defendants, the members of a school board of education, a school principal, the assistant principal, and a clinic nurse in their individual capacities, was in error in a negligence suit brought by the parents of a student who was assaulted by another student; the mandated action set forth in

O.C.G.A. § 20-2-1185 on the part of a school to create a safety plan was a discretionary duty rather than a ministerial duty, and while O.C.G.A. § 20-2-1184 establishes Georgia’s public policy concerning the need to report timely to the appropriate authorities the identity of students who commit certain proscribed acts on school grounds, the statute did not create a civil cause of action for damages in favor



of a victim or anyone else for the purported failure to report timely. Murphy v. Bajjani, 282 Ga. 197, 647 S.E.2d 54 (2007).

### **20-2-1185. School safety plans.**

(a) Every public school shall prepare a school safety plan to help curb the growing incidence of violence in schools, to respond effectively to such incidents, and to provide a safe learning environment for Georgia's children, teachers, and other school personnel. Such plan shall also address preparedness for natural disasters, hazardous materials or radiological accidents, acts of violence, and acts of terrorism. School safety plans of public schools shall be prepared with input from students enrolled in that school, parents or legal guardians of such students, teachers in that school, community leaders, other school employees and school district employees, and local law enforcement, fire service, public safety, and emergency management agencies. School safety plans of private schools may be prepared with input from students enrolled in that school, parents or legal guardians of such students, teachers in that school, other school employees, and local law enforcement, fire service, public safety, and emergency management agencies. Such plans shall be reviewed and, if necessary, updated annually. Such plans of public schools shall be submitted to the local emergency management agency.

(b) A public school may request funding assistance from the state for the installation of safety equipment including, but not limited to, video surveillance cameras, metal detectors, and other similar security devices. Funding may be provided to a public school in accordance with a school safety plan prepared by the school and approved by the local board of education, the Department of Education, and the Georgia Emergency Management Agency.

(c) School safety plans prepared by public schools shall address security issues in school safety zones as defined in paragraph (1) of subsection (a) of Code Section 16-11-127.1. School safety plans should also address security issues involving the transportation of pupils to and from school and school functions when such transportation is furnished by the school or school system and school functions held during noninstructional hours.

(d) The Georgia Emergency Management Agency shall provide training and technical assistance to public school systems, and may provide this same training and technical assistance to private school systems, and independent private schools throughout this state in the area of emergency management and safe school operations. This training and technical assistance shall include, but not be limited to, crisis response team development, site surveys and safety audits, crisis management planning, exercise design, safe school planning, emergency operations

planning, search and seizure, bomb threat management, and model school safety plans. (Code 1981, § 20-2-1185, enacted by Ga. L. 1994, p. 1012, § 3; Ga. L. 1999, p. 379, § 1.)

**Editor's notes.** — Ga. L. 1994, p. 1012, § 1, not codified by the General Assembly, provides that the Act shall be known and may be cited as the "School Safety and Juvenile Justice Reform Act of 1994."

Ga. L. 1994, p. 1012, § 2, not codified by the General Assembly, sets forth legislative findings and determinations for the "School Safety and Juvenile Justice Reform Act of 1994."

Ga. L. 1994, p. 1012, § 29, not codified

by the General Assembly, provides for severability.

Ga. L. 1994, p. 1012, § 30, not codified by the General Assembly, provides that the Act shall apply to all offenses committed on or after May 1, 1994.

**Law reviews.** — For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006). For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

## JUDICIAL DECISIONS

**Liability of officials.** — Trial court properly granted summary judgment to a county school board and the board's superintendent in a parents' negligence action arising out of an attack on school grounds that injured the parents' child as the board and the superintendent presented sufficient evidence that a school safety plan was in place at the elementary school at the time the child was attacked, entitling the board and the superintendent to official immunity barring the parents' negligence claims. *Leake v. Murphy*, 284 Ga. App. 490, 644 S.E.2d 328 (2007), cert. denied, 2007 Ga. LEXIS 671 (Ga. 2007).

Appellate court's reversal of a grant of judgment on the pleadings to defendants, the members of a school board of education, a school principal, the assistant principal, and a clinic nurse in their individual capacities, was in error in a negligence suit brought by the parents of a student who was assaulted by another student; the mandated action set forth in O.C.G.A. § 20-2-1185 on the part of a school to

create a safety plan was a discretionary duty rather than a ministerial duty, and while O.C.G.A. § 20-2-1184 establishes Georgia's public policy concerning the need to report timely to the appropriate authorities the identity of students who commit certain proscribed acts on school grounds, the statute did not create a civil cause of action for damages in favor of a victim or anyone else for the purported failure to report timely. *Murphy v. Bajjani*, 282 Ga. 197, 647 S.E.2d 54 (2007).

**Preparation of safety plan is discretionary; Leake v. Murphy overruled.**

— Mandated action set forth in O.C.G.A. § 20-2-1185 with regard to every public school preparing a school safety plan is a discretionary duty rather than a ministerial duty; by so deciding, the Supreme Court of Georgia determined that the holding in *Leake v. Murphy*, 274 Ga. App. 219 (2005) was incorrect and overruled that holding. *Murphy v. Bajjani*, 282 Ga. 197, 647 S.E.2d 54 (2007).

## ARTICLE 28

### SICK LEAVE FOR FOOD SERVICE PERSONNEL

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1986, the "Arti-

cle 28" enacted by Ga. L. 1986, p. 1172, was redesignated as "Article 29".

**20-2-1190. Allotment of state funds for sick leave.**

The State Board of Education shall establish by rules or regulations a system of allotment of state funds to local school systems to provide five days' sick leave for each fiscal school year for each full-time school food service manager and each full-time school food service employee. (Code 1981, § 20-2-1190, enacted by Ga. L. 1986, p. 924, § 1.)

**20-2-1191. Requirements for sick-leave programs.**

The rules or regulations of the State Board of Education adopted pursuant to Code Section 20-2-1190 shall be subject to the following requirements:

- (1) School food service managers and employees who are eligible for membership in the Public School Employees Retirement System shall qualify for sick leave under this article;
- (2) Funds for sick leave shall be allotted on the basis of the state-wide average compensation for full-time school food service managers and the state-wide average compensation for full-time school food service employees as such averages are determined by the State Board of Education; and
- (3) Unused sick leave shall be accumulated from one school year to the next up to a maximum of ten days. (Code 1981, § 20-2-1191, enacted by Ga. L. 1986, p. 924, § 1.)

**20-2-1192. Appropriations.**

The funds necessary to carry out the provisions of this article shall come from funds appropriated by the General Assembly to the State Board of Education for the purpose of paying the cost of providing sick leave for school food service personnel. (Code 1981, § 20-2-1192, enacted by Ga. L. 1986, p. 924, § 1.)

ARTICLE 29

INTERLOCAL RISK MANAGEMENT AGENCY

**Cross references.** — Interlocal risk management agencies, T. 36, C. 85. to Code Section 28-9-5, in 1986, the “Article 28” enacted by Ga. L. 1986, p. 1172, was redesignated as this article.

**Code Commission notes.** — Pursuant

**20-2-2001. Definitions.**

As used in this article, the term:



(1) "Administrator" means any person who administers a group self-insurance fund other than the interlocal risk management agency.

(2) "Board of education" or "board" means a public board of education of any county or of any independent school system of this state.

(3) "Commissioner" means the Commissioner of Insurance.

(4) "General liability" means any liability for bodily injury, death, or damage to property owned by others or any other liability, except motor vehicle liability, to which a board of education or school system may be subject either directly or by reason of liability arising out of an act, error, or omission of its employee, agent, or officer in the course and scope of employment.

(5) "Group self-insurance fund" or "fund" means a pool of public moneys established by an interlocal risk management agency from contributions of its members in order to pool the risks of general liability, motor vehicle liability, property damage, or any combination of such risks.

(6) "Interlocal risk management agency" or "agency" means an association formed by boards of education by the execution of an intergovernmental contract for the development and administration of an interlocal risk management program and one or more group self-insurance funds.

(7) "Interlocal risk management program" means a plan and activities carried out under such plan by an interlocal risk management agency to reduce risk of loss on account of general liability, motor vehicle liability, or property damage, including safety engineering and other loss prevention and control techniques, and to administer one or more group self-insurance funds, including the processing and defense of claims brought against members of the agency.

(8) "Motor vehicle liability" means liability to which a board of education or school system may be subject either directly or by reason of liability arising out of the use of a motor vehicle by its employee, agent, or officer in the course and scope of employment. Such term shall also include loss on account of property damage to motor vehicles.

(9) "Property damage" means loss to which a board of education or school system may be subject by reason of physical damage or destruction to real or personal property owned or leased by such board of education or school system.

(10) "School system" means any county school system or any independent school system of any municipality of this state. (Code

1981, § 20-2-2001, enacted by Ga. L. 1986, p. 1172, § 1; Ga. L. 1988, p. 1960, § 1.)

### RESEARCH REFERENCES

**ALR.** — Liability of school or school personnel for injury to student resulting from cheerleader activities, 25 ALR5th 784.

#### **20-2-2002. Establishment; membership.**

(a) A group of boards of education may execute an intergovernmental contract among themselves to form and become members of an interlocal risk management agency. After an interlocal risk management agency has been formed, any board of education may, subject to the bylaws and requirements of such agency, become a member and, through participation in the agency, may:

(1) Pool its general liability risks in whole or in part with those of other boards of education;

(2) Pool its motor vehicle liability risks in whole or in part with those of other boards of education;

(3) Pool its property damage risks in whole or in part with those of other boards of education; or

(4) Jointly purchase general liability, motor vehicle liability, or property damage insurance with other boards of education participating in and belonging to the interlocal risk management agency, the participating boards of education to be coinsured under a master policy or policies with the total premium apportioned among such participants.

(b) Except for the boards of education of independent school systems which elect to participate in an interlocal risk management agency for municipalities established pursuant to Chapter 85 of Title 36, there shall be only one interlocal risk management agency established for boards of education; provided, however, if the Commissioner determines that there are special or unique circumstances or special needs of groups of boards of education which justify the establishment of an additional interlocal risk management agency or agencies, he may authorize the establishment of such additional agency or agencies. Each agency may establish such group self-insurance funds as may be authorized by the Commissioner.

(c) All arrangements and agreements made under the authority of this article shall be in writing. A board of education may become a member of an interlocal risk management agency by the adoption of a resolution by the board of education. The interlocal risk management

agency shall operate under such name and style as shall be provided in the intergovernmental contract creating such agency and shall have the power to bring and defend actions in all courts.

(d) All books, records, and files maintained by any administrator of any fund established by the agency, including but not limited to audit data and all active and inactive claim files, shall at all times be the sole property of the agency and shall be surrendered immediately to the agency upon demand. (Code 1981, § 20-2-2002, enacted by Ga. L. 1986, p. 1172, § 1; Ga. L. 1987, p. 3, § 20; Ga. L. 1988, p. 1960, § 2; Ga. L. 1991, p. 717, § 1.)

#### **20-2-2003. Board of trustees.**

Each intergovernmental contract establishing an intergovernmental risk management agency shall provide for a board of trustees which shall govern the agency. Such board shall be authorized to administer the agency in accordance with the provisions of the intergovernmental contract establishing the agency and shall be authorized to adopt such bylaws, rules, and regulations as may be necessary or desirable in administering such agency. (Code 1981, § 20-2-2003, enacted by Ga. L. 1986, p. 1172, § 1.)

#### **20-2-2004. Agency is not an insurer.**

An interlocal risk management agency created pursuant to this article is not an insurance company or an insurer under Title 33, and the development and administration by such agency of one or more group self-insurance funds shall not constitute doing business as an insurer. (Code 1981, § 20-2-2004, enacted by Ga. L. 1986, p. 1172, § 1.)

#### **20-2-2005. Certificate of authority.**

(a) No interlocal risk management agency shall establish a group self-insurance fund or funds until such agency has been issued a certificate of authority by the Commissioner as provided in this Code section and under such rules and regulations as the Commissioner may promulgate to assure compliance with this article.

(b) The Commissioner shall not be authorized to issue any certificate of authority pursuant to this Code section prior to April 30, 1987. Any application for a certificate of authority pursuant to this Code section which is filed prior to March 1, 1987, shall be updated by the applicant in order to comply with any statute, rule, or regulation which may be promulgated or enacted prior to the issuance of the certificate of authority.



(c) When applying for a certificate of authority, an interlocal risk management agency shall file with the Commissioner an application setting forth:

- (1) The name of the agency;
- (2) The location of the agency's principal office;
- (3) The names and addresses of the members of the agency;
- (4) The names and addresses of the members of each fund;
- (5) The name and address of a Georgia resident designated and appointed as each fund's proposed registered agent for service of process in this state;
- (6) The names and addresses of the members of the board of trustees of the agency;
- (7) A copy of the bylaws of the agency;
- (8) A copy of the intergovernmental contract establishing the agency;
- (9) A copy of the agreement or agreements establishing each fund;
- (10) A copy of any agreements between the agency, any fund of the agency, and any administrator of a fund;
- (11) A statement of the financial condition of the agency and each fund of the agency listing all of their assets and liabilities as of the end of the last preceding month prior to the date of the application on such a form as may be prescribed by the Commissioner;
- (12) A copy of each contract, endorsement, and application form proposed to be issued or used in connection with each fund. Such contracts, endorsements, applications, or revisions thereto shall be filed with and approved by the Commissioner prior to their use; and
- (13) A copy of the rates, rating systems, and rates proposed to be used in connection with each fund. Such rates, rating systems, rules, and any revision thereto shall be filed with and approved by the Commissioner prior to their use.

(d) A fund authorized by this article may be established by an agency only if the agency has enrolled members which:

- (1) For each motor vehicle liability and general liability fund shall generate an annual gross premium of not less than \$300,000.00;
- (2) For each property damage fund shall generate an annual gross premium of not less than \$200,000.00;
- (3) For each fund which includes motor vehicle liability or general liability with property damage shall generate an annual gross premium of not less than \$500,000.00; or

(4) For each fund which includes motor vehicle liability, general liability, and property damage shall generate an annual gross premium of not less than \$800,000.00. (Code 1981, § 20-2-2005, enacted by Ga. L. 1986, p. 1172, § 1; Ga. L. 1987, p. 3, § 20; Ga. L. 1988, p. 13, § 20; Ga. L. 1988, p. 1960, § 3.)

#### **20-2-2006. Issuance, renewal, or revocation of certificate.**

(a) The Commissioner shall examine the application made under Code Section 20-2-2005 to determine whether the agency and any established fund will be able to comply with this article and applicable rules and regulations. If the Commissioner finds that the agency and any established fund are capable of complying with such requirements, he shall issue a certificate of authority to the agency.

(b) If the Commissioner refuses to issue a certificate of authority, he shall issue an order setting forth the reasons for refusal and forward it to the agency. A copy of the order shall be sent to each member of the fund.

(c) Except as otherwise provided in subsection (b) of Code Section 20-2-2005, the Commissioner shall approve or disapprove the application for a certificate of authority within 60 days of receipt by him of the application and all of the supporting information requested.

(d) The Commissioner may refuse to issue or renew or may suspend or revoke the certificate of authority of any agency, in accordance with Code Section 20-2-2012, for failure of the agency to comply with any provision of this article or with any of the rules, regulations, or orders of the Commissioner issued pursuant to this article.

(e) The certificate shall be renewed annually in accordance with rules and regulations promulgated by the Commissioner. (Code 1981, § 20-2-2006, enacted by Ga. L. 1986, p. 1172, § 1.)

**Code Commission notes.** — Pursuant article” was substituted for “thereto” in to Code Section 28-9-5, in 1986, “to this subsection (d).

#### **20-2-2007. Minimum surplus required.**

Each fund formed pursuant to this article shall possess and thereafter maintain minimum surplus in an amount such as the Commissioner may reasonably establish or subsequently require for the protection of the members. The Commissioner may authorize a fund to maintain a deposit consisting of securities eligible for deposit by domestic insurance companies in accordance with Chapter 12 of Title 33 or, for a period not to exceed 60 months, to post a surety bond in lieu of maintaining the minimum surplus required by this Code section. (Code 1981, § 20-2-2007, enacted by Ga. L. 1986, p. 1172, § 1.)

**20-2-2008. Investments.**

The investable assets of a fund may be invested in securities or other investments permitted by the laws of this state for the investment of assets constituting the legal reserves of property and casualty insurance companies or in such other securities or investments as the Commissioner may permit such insurers to invest their funds under Title 33. Such investments shall be subject to the same terms, conditions, and limitations which apply to property and casualty insurance companies under Title 33. (Code 1981, § 20-2-2008, enacted by Ga. L. 1986, p. 1172, § 1.)

**20-2-2009. Joint and several liability of fund members.**

Each board of education shall be jointly and severally liable for all legal obligations of a fund which arise out of an event which occurred while such board was a member of such fund; provided, however, that a fund shall not assume a risk greater than an amount to be determined by the Commissioner; and provided, further, that this legal obligation may be enforced by an assessment against such member as provided in the bylaws of the agency. (Code 1981, § 20-2-2009, enacted by Ga. L. 1986, p. 1172, § 1.)

**20-2-2010. Administrator.**

(a) If an agency contracts with an administrator, the agency and the administrator must enter into a written agreement which shall be subject to review and approval by the Commissioner in accordance with this Code section and which shall contain at least the following:

(1) A contractual provision obligating the administrator to obtain and maintain such bonds, deposits, or insurance coverage as may be required to be maintained by this article; and

(2) A requirement that errors and omissions coverage or other appropriate liability insurance in an amount which is not less than that specified by the rules and regulations of the Commissioner be maintained at all times by the administrator.

(b) The terms of any such agreement shall be reasonable and equitable, and the agreement and any amendments thereto shall be filed with the Commissioner at least 30 days prior to their use. Any such agreement and any and all amendments thereto which have not been specifically disapproved by the Commissioner within 30 days after the filing thereof shall be deemed to be approved.

(c) A copy of the agreement and any and all amendments thereto shall be furnished to each agency or fund member upon request. (Code 1981, § 20-2-2010, enacted by Ga. L. 1986, p. 1172, § 1.)



**20-2-2011. Bond, liability insurance, and claim office of administrator.**

(a) The Commissioner shall require each administrator to have and maintain a fidelity bond in an amount which the Commissioner deems appropriate but which is not less than \$100,000.00.

(b) Errors and omissions coverage or other appropriate liability insurance in an amount which is not less than that specified by the rules and regulations of the Commissioner shall be maintained at all times by an administrator of a fund; and a certificate by the insurer or other appropriate evidence of such coverage shall be filed with the Commissioner by the fund.

(c) Each administrator shall maintain an office in this state for the payment, processing, and adjustment of the claims of the fund or funds which it represents. (Code 1981, § 20-2-2011, enacted by Ga. L. 1986, p. 1172, § 1.)

**20-2-2012. Grounds for revocation, suspension, or refusal to issue or renew certificate; hearing; voluntary dissolution of fund.**

(a) The Commissioner may revoke, suspend, or refuse to issue or renew the certificate of authority of any agency when and if, after investigation, he finds that:

(1) Any certificate of authority issued to the agency was obtained by fraud;

(2) There was any material misrepresentation in the application for the certificate of authority;

(3) The agency, any fund established by the agency, the administrator of a fund, or any marketing representative has otherwise shown itself to be untrustworthy or incompetent;

(4) The agency, any fund established by the agency, the administrator of a fund, or any marketing representative has violated any of the provisions of this article or the rules and regulations of the Commissioner promulgated pursuant to this article;

(5) The agency, any fund established by the agency, or the administrator of a fund has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any moneys which belong to a member or a person otherwise entitled thereto and which have been entrusted to the agency, fund, or administrator in its fiduciary capacities; or

(6) The agency or any fund established by the agency is found to be in an unsound condition or in such condition as to render its future transaction of business in this state hazardous to its members.

(b) Before the Commissioner shall revoke, suspend, or refuse to issue or renew the certificate of authority of any agency, he shall give the agency an opportunity to be fully heard and to introduce evidence in its behalf. In lieu of revoking, suspending, or refusing to issue or renew the certificate of authority of any agency for any of the causes enumerated in this Code section, after hearing as provided in this Code section, the Commissioner may place the fund and its administrator on probation for a period of time not to exceed one year when, in his judgment, he finds that the public interest and the interests of the fund's members would not be harmed by the continued operation of the fund. At any hearing provided for by this Code section, the Commissioner or his designee shall have authority to administer oaths to witnesses. Any witness testifying falsely after taking an oath commits the offense of perjury.

(c) No fund shall be voluntarily dissolved or otherwise voluntarily cease to function unless:

(1) Written approval is first obtained from the Commissioner; and

(2) The Commissioner determines that all claims and other legal obligations of the fund have been paid or that adequate provisions for such payment have been made. (Code 1981, § 20-2-2012, enacted by Ga. L. 1986, p. 1172, § 1.)

### **20-2-2013. Tax exemption.**

Interlocal risk management agencies and funds established by such agencies shall be exempt from state and local taxes and fees. (Code 1981, § 20-2-2013, enacted by Ga. L. 1986, p. 1172, § 1.)

### **20-2-2014. Examination of funds by Commissioner.**

The Commissioner shall have the authority to require and conduct periodic examinations to verify the solvency of funds in the same manner and under the same conditions as insurers are examined under Chapter 2 of Title 33. (Code 1981, § 20-2-2014, enacted by Ga. L. 1986, p. 1172, § 1.)

### **20-2-2015. Fund insufficient to discharge obligations; liquidation.**

(a) If the assets of a fund are at any time insufficient to enable a fund to discharge its legal liabilities and other obligations and to maintain

the reserves and surplus required of it under this article, the agency shall forthwith make up the deficiency or levy an assessment upon the members of the fund for the amount needed to make up the deficiency.

(b) If the agency fails to make up the deficiency or to make the required assessment of the fund members within 30 days after the Commissioner orders it to do so or if the deficiency is not fully made up within 60 days after the date on which any such assessment is made or within such longer period of time as may be specified by the Commissioner, the fund shall be deemed to be insolvent and shall be proceeded against in the same manner as are domestic insurers under Chapter 37 of Title 33; and the Commissioner shall have the same powers and limitations in such proceedings as are provided under Chapter 37 of Title 33, except as otherwise provided for in this article.

(c) If the liquidation of a fund is ordered, an assessment shall be levied upon its members for such an amount as the Commissioner determines to be necessary to discharge all liabilities of the fund, including the reasonable costs of liquidation. (Code 1981, § 20-2-2015, enacted by Ga. L. 1986, p. 1172, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1986, the second reference to “Chapter 37 of Title 33” was substituted for “that chapter” in subsection (b).

## **20-2-2016. Rules and regulations.**

The Commissioner shall have authority to promulgate rules and regulations to effectuate the provisions of this article. (Code 1981, § 20-2-2016, enacted by Ga. L. 1986, p. 1172, § 1.)

## **20-2-2017. Remedies of aggrieved parties.**

Any party which is aggrieved by any act, determination, order, or any other action of the Commissioner taken pursuant to this article may request a hearing before the Commissioner or otherwise proceed in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” (Code 1981, § 20-2-2017, enacted by Ga. L. 1986, p. 1172, § 1.)

## **20-2-2018. Excess loss funding program; condition for certificate of authority.**

(a) An interlocal risk management agency shall maintain at all times an excess loss funding program acceptable to the Commissioner. An excess loss funding program may consist of excess insurance, self-funding from unobligated surplus of a fund, any combination of such



excess insurance or self-funding, or any other funding program acceptable to the Commissioner.

(b) The excess loss funding program of an agency shall be approved by the Commissioner as a condition to the issuance and maintenance of a certificate of authority of any agency which establishes a fund or funds authorized pursuant to this article. An agency may be permitted to purchase excess insurance:

(1) From insurers authorized to transact business in this state; or

(2) From approved surplus lines carriers. (Code 1981, § 20-2-2018, enacted by Ga. L. 1986, p. 1172, § 1; Ga. L. 1988, p. 1960, § 4.)

**20-2-2019. Annual audit.**

Each fund established under this article shall have an annual audit of its books and accounts performed by a certified public accountant. Such audit shall be conducted in accordance with generally accepted accounting principles. A copy of such audit shall be made available to fund members. (Code 1981, § 20-2-2019, enacted by Ga. L. 1986, p. 1172, § 1.)

**20-2-2020. Sovereign immunity not waived.**

The exercise by a board of education or school system of the authority provided in this article shall not constitute the provision of liability insurance protection under Article I, Section II, Paragraph IX of the Constitution of the State of Georgia. The participation by a board of education or school system as a member of an agency authorized by this chapter shall not constitute the obtaining of liability insurance and no sovereign immunity of a board of education or school system shall be waived on account of such participation. (Code 1981, § 20-2-2020, enacted by Ga. L. 1986, p. 1172, § 1; Ga. L. 1988, p. 1960, § 5.)

ARTICLE 30

“MULTIRACIAL” CLASSIFICATION

**Editor’s notes.** — Ga. L. 1994, p. 1360, § 4, not codified by the General Assembly, provides that the provisions of the Act apply to those applications, questionnaires, and other written documents printed or typed or otherwise originating after July 1, 1994; provided, however, that

all documents printed and in stock on July 1, 1994, which bear the racial designation “other” shall be used and the stock depleted prior to reordering under the provisions of the Act even if the date occurs after July 1, 1994.

**20-2-2040. "Multiracial" defined.**

As used in this article, the term "multiracial" means having parents of different races. (Code 1981, § 20-2-2040, enacted by Ga. L. 1994, p. 1360, § 2.)

**20-2-2041. "Multiracial" classification required on forms.**

(a) All written forms, applications, questionnaires, and other written documents or materials produced by or for or used by any public elementary or secondary school in the state which request information on the racial or ethnic identification of a respondent and which contain a list of racial and ethnic classifications from which such respondent must select one shall include among their choices the classification "multiracial."

(b) No such written document or computer software described in subsection (a) of this Code section shall bear the designation "other" as a racial or ethnic classification after July 1, 1994, unless such document was printed and in stock before July 1, 1994. (Code 1981, § 20-2-2041, enacted by Ga. L. 1994, p. 1360, § 2.)

**Cross references.** — Multiracial classification on forms, §§ 34-1-5, 50-18-135.

**ARTICLE 31****CHARTER SCHOOLS ACT OF 1998**

**Editor's notes.** — Ga. L. 1998, p. 1080, § 4, not codified by the General Assembly, provides that the Act shall be applicable to all petitions filed on or after July 1, 1998.

**Administrative rules and regulations.** — Charter school planning grants, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Sec. 160-1-4-.155.

Charter schools definitions, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Sec. 160-4-9-.04.

**Law reviews.** — For review of 1998 legislation relating to education, see 15 Ga. St. U. L. Rev. 101 (1998).

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 3, 12.

**20-2-2060. Short title.**

This article shall be known and may be cited as the "Charter Schools Act of 1998." (Code 1981, § 20-2-2060, enacted by Ga. L. 1998, p. 1080, § 3.)

**RESEARCH REFERENCES**

**ALR.** — Validity, construction, and application of statute or regulation governing charter schools, 78 ALR5th 533.

**20-2-2061. Legislative intent.**

It is the intent of the General Assembly to increase student achievement through academic and organizational innovation by encouraging local school systems to utilize the flexibility of a performance based contract called a charter. (Code 1981, § 20-2-2061, enacted by Ga. L. 1998, p. 1080, § 3; Ga. L. 2002, p. 388, § 1; Ga. L. 2004, p. 107, § 19; Ga. L. 2005, p. 798, § 6/SB 35.)

**20-2-2062. Definitions.**

As used in this article, the term:

(1) “Charter” means a performance based contract between a local board and a charter petitioner, the terms of which are approved by the local board and by the state board in the case of a local charter school, between the state board and a charter petitioner, the terms of which are approved by the state board in the case of a state chartered special school, or between a local board and the state board, the terms of which are approved by the state board in the case of a charter system. By entering into a charter, a charter petitioner and local board shall be deemed to have agreed to be bound to all the provisions of this article as if such terms were set forth in the charter.

(1.1) “Charter attendance zone” means all or any portion of the local school system in which the charter school is located and may include all or any portion of other local school systems if the charter school is jointly authorized pursuant to subsection (c) of Code Section 20-2-2063.

(2) “Charter petitioner” means a local school, local board of education, private individual, private organization, or state or local public entity that submits a petition for a charter. The term “charter petitioner” does not include home study programs or schools, sectarian schools, religious schools, private for profit schools, private educational institutions not established, operated, or governed by the State of Georgia, or existing private schools.

(3) “Charter school” means a public school that is operating under the terms of a charter.

(3.1) “Charter system” means a local school system that is operating under the terms of a charter pursuant to Code Section 20-2-2063.1.



(4) "Conversion charter school" means a charter school that existed as a local school prior to becoming a charter school.

(5) "Faculty and instructional staff members" means all certificated personnel assigned to the school on a full-time basis and all paraprofessionals assigned to the school on a full-time basis. The term "paraprofessional" shall have the same meaning as set out in Code Section 20-2-204.

(5.1) "Governing council" means a school level council of parents, teachers, administrators, and others who are involved in school level governance within a charter system.

(5.2) "High school cluster" means a high school and all of the middle and elementary schools which contain students who matriculate to such high school. The schools in a high school cluster may include charter schools, local schools, or a combination of both.

(6) "Local board" means a county or independent board of education exercising control and management of a local school system pursuant to Article VIII, Section V, Paragraph II of the Constitution.

(7) "Local charter school" means a conversion charter school or start-up charter school that is operating under the terms of a charter between the charter petitioner and the local board.

(8) "Local revenue" means local taxes budgeted for school purposes in excess of the local five mill share, combined with any applicable equalization grant and budgeted revenues from any of the following: investment earnings, unrestricted donations, and the sale of surplus property; but exclusive of revenue from bonds issued for capital projects, revenue to pay debt service on such bonds and local option sales tax for capital projects. Nothing in this paragraph shall be construed to prevent a local board from including a local charter school in projects specified in the ballot language of a local option sales tax or bond referendum.

(9) "Local school" means a public school in Georgia that is under the management and control of a local board.

(10) "Local school system" means the system of public schools established and maintained by a local board within its limits pursuant to Article VIII, Section V, Paragraph I of the Constitution.

(11) "Petition" means a proposal to establish a charter school or a charter system.

(12) "QBE formula earnings" means funds earned for the Quality Basic Education Formula pursuant to Code Section 20-2-161, including the portion of such funds that are calculated as the local five mill share in accordance with Code Section 20-2-164.

(12.1) “School level governance” means decision-making authority in personnel decisions, financial decisions, curriculum and instruction, resource allocation, establishing and monitoring the achievement of school improvement goals, and school operations.

(13) “Special school” means a school whose creation is authorized pursuant to Article VIII, Section V, Paragraph VII of the Constitution.

(14) “Start-up charter school” means a charter school that did not exist as a local school prior to becoming a charter school.

(15) “State board” means the State Board of Education.

(16) “State chartered special school” means a charter school created as a special school that is operating under the terms of a charter between the charter petitioner and the state board.

(17) “System charter school” means a school within a charter system. (Code 1981, § 20-2-2062, enacted by Ga. L. 1998, p. 1080, § 3; Ga. L. 2001, p. 148, § 22; Ga. L. 2002, p. 388, § 1; Ga. L. 2005, p. 798, §§ 7, 8/SB 35; Ga. L. 2007, p. 185, § 3/SB 39.)

**Editor’s notes.** — Ga. L. 2007, p. 185, § 1/SB 39, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Charter Systems Act.’”

Ga. L. 2007, p. 185, § 2/SB 39, not codified by the General Assembly, provides: “The General Assembly finds that schools and school systems should be given high flexibility to tailor their educational programs to meet the unique needs of their communities. In furtherance of

this, schools and school systems should be encouraged to use innovative educational programs including local management of schools and should be provided resources to help design and implement innovative programs. The General Assembly further finds that schools and school systems shall be held accountable for student achievement.”

**Law reviews.** — For note on 2007 amendment of this Code section, see 24 Georgia St. U.L. Rev. 121 (2007).

## 20-2-2063. Charter petitions.

(a) The State Board of Education shall promulgate rules, regulations, policies, and procedures to govern the contents of a charter petition.

(b) The State Board of Education shall establish rules, regulations, policies, and procedures to provide for the receipt of charter petitions from a group of two or more local schools as a single charter petitioner to convert to conversion charter school status. An existing conversion charter school may join as part of a group charter petition, and if such group charter petition is approved, the new charter shall supersede the conversion charter school’s previous charter. A group charter petition may be comprised of all the schools in a high school cluster as such term is defined in Code Section 20-2-2062.

(c) The State Board of Education shall establish rules, regulations, policies, and procedures to provide for charter petitions from two or more local school systems to jointly authorize a local charter school.

(d) The State Board of Education shall establish rules, regulations, policies, and procedures to provide for a charter petition from a local school system to establish a charter system. Such rules, regulations, policies, and procedures shall require that a charter petition and the charter contain an explanation of the structure, rights, and responsibilities of the principal, governing council, and local board of education of the system charter school, with an objective of maximizing school level governance and the involvement of parents, teachers, and community members in such governance. (Code 1981, § 20-2-2063, enacted by Ga. L. 1998, p. 1080, § 3; Ga. L. 2002, p. 388, § 1; Ga. L. 2005, p. 798, § 9/SB 35; Ga. L. 2007, p. 185, § 4/SB 39.)

**Editor's notes.** — Ga. L. 2007, p. 185, § 1/SB 39, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Charter Systems Act.'"

Ga. L. 2007, p. 185, § 2/SB 39, not codified by the General Assembly, provides: "The General Assembly finds that schools and school systems should be given high flexibility to tailor their educational programs to meet the unique needs of their communities. In furtherance of

this, schools and school systems should be encouraged to use innovative educational programs including local management of schools and should be provided resources to help design and implement innovative programs. The General Assembly further finds that schools and school systems shall be held accountable for student achievement."

**Law reviews.** — For note on 2007 amendment of this Code section, see 24 Gergia St. U.L. Rev. 121 (2007).

## OPINIONS OF THE ATTORNEY GENERAL

**State charter schools are subject to** the control and management of the local board of education. 2001 Op. Att'y Gen. No. 2001-9.

### 20-2-2063.1. Charter Advisory Committee established; members; duties.

(a) The state board shall establish a Charter Advisory Committee to review charter petitions for compliance with established standards of the state board, to make recommendations to the state board on charter policy, and to provide recommendations to the state board regarding charter petitions. The committee shall be composed of nine members as follows:

(1) Three members appointed by the chairperson of the state board;

(2) Three members appointed by the Lieutenant Governor; and

(3) Three members appointed by the Speaker of the House of Representatives.



All members shall serve at the pleasure of their respective appointing officials. The committee shall elect a chairperson from among its membership.

(b) The committee shall conduct itself in accordance with any rules and guidelines established by the state board with regard to timeframes, procedures, and protocol.

(c) The committee shall be authorized to request clarifying information from a charter petitioner and to receive input from interested parties on a charter petition.

(d) The committee shall:

(1) Make recommendations to the state board of approval or denial on each charter petition and shall specify the reasons for such recommendations;

(2) Periodically make recommendations to the state board regarding charter policy; and

(3) Make recommendations to the state board on the disbursement of planning grants for charter systems, if funds are made available.

(e) The committee shall be authorized to enter into contracts, subject to available funding, with one or more consultants to assist the committee in its duties and if directed to do so by the committee, to do the following:

(1) Assist charter petitioners in the drafting of their petitions;

(2) Assist charter petitioners in the design and implementation of innovative education programs and school level governance based on research, model programs, or other credible information;

(3) Monitor and assist charter schools and charter systems; and

(4) Perform any other functions related to the support of the committee.

(f) The committee shall work in cooperation with the Office of Charter School Compliance, as established pursuant to Code Section 20-2-2069.

(g) The members of the committee shall receive no compensation for their services but shall be reimbursed for actual and necessary expenses incurred by them in carrying out their duties.

(h) The committee shall be assigned to the Department of Education for administrative purposes only, as prescribed in Code Section 50-4-3. (Code 1981, § 20-2-2063.1, enacted by Ga. L. 2007, p. 185, § 5/SB 39.)

**Editor's notes.** — This Code section formerly pertained to exemption of charter schools from statutory and regulatory requirements. The former Code section was based on Code 1981, § 20-2-2063.1, enacted by Ga. L. 2004, p. 107, § 19A and was repealed by Ga. L. 2005, p. 798, § 10/SB 35, effective July 1, 2005.

Ga. L. 2007, p. 185, § 1/SB 39, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Charter Systems Act.'"

Ga. L. 2007, p. 185, § 2/SB 39, not codified by the General Assembly, provides: "The General Assembly finds that schools and school systems should be

given high flexibility to tailor their educational programs to meet the unique needs of their communities. In furtherance of this, schools and school systems should be encouraged to use innovative educational programs including local management of schools and should be provided resources to help design and implement innovative programs. The General Assembly further finds that schools and school systems shall be held accountable for student achievement."

**Law reviews.** — For note on 2007 enactment of this Code section, see 24 Ga. St. U. L. Rev. 121 (2007).

## 20-2-2063.2. Charter systems.

(a) The state board shall be authorized to enter into a charter with a local board to establish a local school system as a charter system.

(b) A local board seeking to create a charter system must submit a petition to the state board. Prior to submitting such petition, the local board shall:

(1) Adopt a resolution approving the proposed charter system petition;

(2) Conduct at least two public hearings and provide notice of the hearings in the same manner as other legal notices of the local board; and

(3) Send a notice to each principal within the local school system of the hearings with instructions that each school shall distribute the notice to faculty and instructional staff members and to the parent or guardian of each student enrolled in the school.

The local board may revise its proposed charter system petition, upon resolution, as a result of testimony at the public hearings or for other purposes.

(c) Prior to approval or denial of a charter petition for a charter system, the state board shall receive and give all due consideration to the recommendation and input from the Charter Advisory Committee established in Code Section 20-2-2063.1. The state board shall approve the charter if the state board finds, after receiving input from the Charter Advisory Committee, that the petition complies with the rules, regulations, policies, and procedures promulgated pursuant to Code Section 20-2-2063 and the provisions of this title, is in the public interest, and promotes school level governance.

(d) All schools within an approved charter system shall be system charter schools except as otherwise provided in subsections (f) and (g) of this Code section.

(e)(1) Subject to appropriations by the General Assembly or other available funding, the state board, after receiving input and recommendations from the Charter Advisory Committee, shall disburse planning grants to local school systems which desire to become charter systems. Such grants will be disbursed in accordance with any applicable guidelines, policies, and requirements established by the state board.

(2) Subject to specific appropriations by the General Assembly for this purpose, the state board shall disburse implementation grants in the amount of \$125,000.00 or such other amount as determined by the state board to each charter system. The state board shall be authorized to approve up to five petitions for charter systems during fiscal year 2008, and may approve up to a maximum number of petitions in following years as may be established pursuant to board rules and as subject to availability of funding for implementation grants.

(f) A system charter school shall not be precluded from petitioning to become a conversion charter school, in accordance with Code Section 20-2-2064, not subject to the terms of the system charter. In the event a system charter school becomes a conversion charter school, the system charter shall be amended to reflect that such school is no longer bound by the system charter.

(g) An existing conversion or start-up charter school within a local school system which is petitioning to become a charter system shall have the option of continuing under its own existing charter, not subject to the terms of the system charter, or of terminating its existing charter, upon agreement by the local board and state board, and becoming subject to the system charter as a charter system school. (Code 1981, § 20-2-2063.2, enacted by Ga. L. 2007, p. 185, § 5/SB 39.)

**Editor's notes.** — Ga. L. 2007, p. 185, § 1/SB 39, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Charter Systems Act.'"

Ga. L. 2007, p. 185, § 2/SB 39, not codified by the General Assembly, provides: "The General Assembly finds that schools and school systems should be given high flexibility to tailor their educational programs to meet the unique needs of their communities. In furtherance of

this, schools and school systems should be encouraged to use innovative educational programs including local management of schools and should be provided resources to help design and implement innovative programs. The General Assembly further finds that schools and school systems shall be held accountable for student achievement."

**Law reviews.** — For note on 2007 enactment of this Code section, see 24 Ga. St. U. L. Rev. 121 (2007).



**20-2-2064. Approval or denial of petition.**

(a) A charter petitioner seeking to create a conversion charter school must submit a petition to the local board of the local school system in which the proposed charter school will be located. The local board must by a majority vote approve or deny a petition no later than 60 days after its submission unless the petitioner requests an extension; provided, however, that a denial of a petition by a local board shall not preclude the submission to the local board of a revised petition that addresses deficiencies cited in the denial; and provided, further, that the local board shall not act upon a petition for a conversion charter school, including, but not limited to, a conversion charter for a high school cluster, until such petition:

(1)(A) Has been freely agreed to, by secret ballot, by a majority of the faculty and instructional staff members of the petitioning local school at a public meeting called with two weeks' advance notice for the purpose of deciding whether to submit the petition to the local board for its approval; and

(B) Has been freely agreed to, by secret ballot, by a majority of the parents or guardians of students enrolled in the petitioning local school present at a public meeting called with two weeks' advance notice for the purpose of deciding whether to submit the petition to the local board for its approval; or

(2) If for a high school cluster, has been approved by a majority of the school councils in the high school cluster and has been freely agreed to, by secret ballot, by at least 60 percent of the combined vote of the faculty and instructional staff members of the high school cluster and the parents or guardians of students who reside in the attendance zone of such high school cluster present at a public meeting called with two weeks' advance notice for the purpose of deciding whether to submit the petition to the local board for its approval. Each school council within the high school cluster shall appoint two representatives to a committee that shall conduct the vote.

This subsection shall not apply to a system charter school petitioning to be a conversion charter school.

(b) A charter petitioner seeking to create a start-up charter school must submit a petition to the local board of the local school system in which the proposed charter school will be located. The local board must by a majority vote approve or deny a petition no later than 60 days after its submission unless the petitioner requests an extension. A denial of a petition by a local board shall not preclude the submission to the local board of a revised petition that addresses deficiencies cited in the denial.

(c) A system charter school's school council or governing council, as applicable, may petition to become a conversion charter school. The petition shall be submitted to the local board of the charter system in which the school is located. The local board must by a majority vote approve or deny a petition no later than 60 days after its submission unless the petitioner requests an extension; provided, however, that a denial of a petition by a local board shall not preclude the submission to the local board of a revised petition that addresses deficiencies cited in the denial.

(d) A local board shall approve a petition that complies with the rules, regulations, policies, and procedures promulgated in accordance with Code Section 20-2-2063 and the provisions of this title and is in the public interest. If a local board denies a petition, it must within 60 days specifically state the reasons for the denial, list all deficiencies with respect to Code Section 20-2-2063, and provide a written statement of the denial to the charter petitioner and the state board.

(e) The state board or the Charter Advisory Committee, if directed by the state board to do so, may mediate between the local board and a charter petitioner whose petition was denied to assist in resolving issues which led to denial of the petition by the local board. (Code 1981, § 20-2-2064, enacted by Ga. L. 1998, p. 1080, § 3; Ga. L. 2000, p. 618, § 74; Ga. L. 2002, p. 388, § 1; Ga. L. 2004, p. 107, § 19B; Ga. L. 2007, p. 185, § 6/SB 39; Ga. L. 2010, p. 551, § 1/SB 457.)

**The 2010 amendment**, effective July 1, 2010, inserted “, including, but not limited to, a conversion charter for a high school cluster,” near the end of the last sentence in the introductory paragraph of subsection (a); redesignated former paragraphs (a)(1) and (a)(2) as present subparagraphs (a)(1)(A) and (a)(1)(B), respectively; in subparagraph (a)(1)(B), inserted “the” near the beginning, and substituted “; or” for a period at the end; and added paragraph (a)(2).

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

Ga. L. 2007, p. 185, § 1/SB 39, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Charter Systems Act.’”

Ga. L. 2007, p. 185, § 2/SB 39, not codified by the General Assembly, provides: “The General Assembly finds that schools and school systems should be given high flexibility to tailor their educational programs to meet the unique needs of their communities. In furtherance of this, schools and school systems should be encouraged to use innovative educational programs including local management of schools and should be provided resources to help design and implement innovative programs. The General Assembly further finds that schools and school systems shall be held accountable for student achievement.”

**Law reviews.** — For note on 2007 amendment of this Code section, see 24 Ga. St. U. L. Rev. 121 (2007).

**20-2-2064.1. Review of charter by state board; charters for state chartered special schools.**

(a) Prior to approval or denial of a charter petition under this Code section, the state board shall receive and give all due consideration to the recommendation and input from the Charter Advisory Committee established in Code Section 20-2-2063.1.

(b) The state board shall approve the charter of a charter petitioner if the petition has been approved by the local board of the local school system in which the proposed charter school will be located and the state board finds, after receiving input from the Charter Advisory Committee, that the petition complies with the rules, regulations, policies, and procedures promulgated in accordance with Code Section 20-2-2063 and the provisions of this title and is in the public interest. If the state board denies a petition, it must within 60 days specifically state the reasons for the denial, list all deficiencies with regard to Code Section 20-2-2063, and provide a written statement of the denial to the charter petitioner and to the local board.

(c) No application for a state chartered special school may be made to the state board by a petitioner for a conversion charter school that has been denied by a local board. Upon denial of a petition for a start-up charter school by a local board and upon application to the state board by the petitioner, the state board shall approve the charter of a start-up charter petitioner for a state chartered special school if the state board finds, after receiving input from the Charter Advisory Committee, that such petition meets the requirements set forth in Code Section 20-2-2063 and the provisions of this title, and is in the public interest. (Code 1981, § 20-2-2064.1, enacted by Ga. L. 2002, p. 388, § 1; Ga. L. 2005, p. 798, § 11/SB 35; Ga. L. 2007, p. 185, § 7/SB 39.)

**Editor's notes.** — Ga. L. 2007, p. 185, § 1/SB 39, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Charter Systems Act.'"

Ga. L. 2007, p. 185, § 2/SB 39, not codified by the General Assembly, provides: "The General Assembly finds that schools and school systems should be given high flexibility to tailor their educational programs to meet the unique needs

of their communities. In furtherance of this, schools and school systems should be encouraged to use innovative educational programs including local management of schools and should be provided resources to help design and implement innovative programs. The General Assembly further finds that schools and school systems shall be held accountable for student achievement."

**OPINIONS OF THE ATTORNEY GENERAL**

**State charter granted under subsection (d)(1) (now subsection (b)) of O.C.G.A. § 20-2-2064.1** must meet the same requirements and definitions as

other charter schools in the Charter Schools Act, O.C.G.A. § 20-2-2060 et seq. 2001 Op. Att'y Gen. No. 2001-9.



**20-2-2065. Waiver of provisions of this title; requirements for operating; control and management.**

(a) Except as provided in this article or in a charter, a charter school, or for charter systems, each school within the system, shall not be subject to the provisions of this title or any state or local rule, regulation, policy, or procedure relating to schools within an applicable school system regardless of whether such rule, regulation, policy, or procedure is established by the local board, the state board, or the Department of Education; provided, however, that the state board may establish rules, regulations, policies, or procedures consistent with this article relating to charter schools. A waiver granted pursuant to this Code section for a charter system shall apply to each system charter school within the system. In exchange for such a waiver, the charter school agrees to meet or exceed the performance based goals included in the charter and approved by the local board or, for the charter system, the system agrees to meet or exceed the system-wide performance based goals included in the charter and approved by the state board, including but not limited to raising student achievement. For a charter system, the charter shall delineate the performance based goals that the system and each school will be expected to meet as well as the criteria by which a system charter may be revoked in addition to those contained in Code Section 20-2-2068.

(b) In determining whether to approve a charter petition or renew an existing charter, the local board and state board shall ensure that a charter school, or for charter systems, each school within the system, shall be:

(1) A public, nonsectarian, nonreligious, nonprofit school that is not home based, provided that a charter school's nonprofit status shall not prevent the school from contracting for the services of a for profit entity and that nothing in this Code section shall preclude the use of computer and Internet based instruction for students in a virtual or remote setting;

(2) Subject to the control and management of the local board of the local school system in which the charter school is located, as provided in the charter and in a manner consistent with the Constitution, if a local charter school;

(3) Subject to the supervision of the state board, as provided in the charter and in a manner consistent with the Constitution, if a state chartered special school;

(4) Organized and operated as a nonprofit corporation under the laws of this state; provided, however, that this paragraph shall not apply to any charter petitioner that is a local school, local school system, or state or local public entity;

(5) Subject to all federal, state, and local rules, regulations, court orders, and statutes relating to civil rights; insurance; the protection of the physical health and safety of school students, employees, and visitors; conflicting interest transactions; and the prevention of unlawful conduct;

(6) Subject to all laws relating to unlawful conduct in or near a public school;

(7) Subject to an annual financial audit conducted by the state auditor or, if specified in the charter, by an independent certified public accountant licensed in this state;

(8) Subject to the provisions of Part 3 of Article 2 of Chapter 14 of this title, and such provisions shall apply with respect to charter schools whose charters are granted or renewed on or after July 1, 2000;

(9) Subject to all reporting requirements of Code Section 20-2-160, subsection (e) of Code Section 20-2-161, Code Section 20-2-320, and Code Section 20-2-740;

(10) Subject to the requirement that it shall not charge tuition or fees to its students except as may be authorized for local boards by Code Section 20-2-133;

(11) Subject to the provisions of Code Section 20-2-1050 requiring a brief period of quiet reflection;

(12) Subject to the provisions of Code Section 20-2-211.1 relating to fingerprint and criminal background checks; and

(13) Subject to the provisions of subsection (c) of Code Section 20-2-327 relating to individual graduation plans. (Code 1981, § 20-2-2065, enacted by Ga. L. 1998, p. 1080, § 3; Ga. L. 2000, p. 618, § 75; Ga. L. 2002, p. 388, § 1; Ga. L. 2005, p. 798, § 12/SB 35; Ga. L. 2006, p. 488, § 1/SB 610; Ga. L. 2007, p. 185, § 8/SB 39; Ga. L. 2010, p. 237, § 1G/HB 1079; Ga. L. 2011, p. 635, § 9/HB 186.)

**The 2010 amendment**, effective July 1, 2010, in subsection (b), deleted “and” at the end of paragraph (b)(10), substituted “; and” for a period at the end of paragraph (b)(11), and added paragraph (b)(12).

**The 2011 amendment**, effective May 13, 2011, deleted “and” at the end of paragraph (b)(11); substituted “; and” for a period at the end of paragraph (b)(12); and added paragraph (b)(13).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2005, in paragraph (b)(4), “that” was substituted for “who” following “charter petitioner” and in

paragraph (b)(7), “state auditor or,” was substituted for “state auditor, or”.

**Editor’s notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

Ga. L. 2007, p. 185, § 1/SB 39, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Charter Systems Act.’”

Ga. L. 2007, p. 185, § 2/SB 39, not codified by the General Assembly, provides: “The General Assembly finds that

schools and school systems should be given high flexibility to tailor their educational programs to meet the unique needs of their communities. In furtherance of this, schools and school systems should be encouraged to use innovative educational programs including local management of schools and should be provided resources to help design and implement innovative programs. The General Assembly further finds that schools and school systems shall be held accountable for student achievement.”

Ga. L. 2011, p. 635, § 1/HB 186, not codified by the General Assembly, provides: “The General Assembly finds that:

“(1) Our state’s long-term prosperity depends on supporting an education system that is designed to prepare our students for a global economy;

“(2) High school students and parents must understand that they have options for career pathway programs of study that join a college-ready academic core with quality career, technical, and agricultural education studies that result in a high school diploma and preparation for success in advanced training, an associate’s degree, a baccalaureate degree, and a career;

“(3) Local school systems must provide every student with choices that are academically rigorous and aligned to opportunities in high-demand, high-skill, high-wage career fields and to postsecondary career and technical pathways leading to advanced credentials or degrees;

“(4) The State Board of Education, the Board of Regents of the University System of Georgia, and the Board of Technical and Adult Education must work together so that academic courses that are embedded within career, technical, and agricultural education courses (CTAE) are given appropriate academic credit at the high school level and recognized at the postsecondary level;

“(5) Teachers should be provided with professional development opportunities that enforce the academically rigorous standards in relevant, project based coursework;

“(6) High school students should clearly understand the options for dual high school and postsecondary credit, and the state should properly fund these options;

“(7) Every state education agency, postsecondary institution, and local school system should provide all high school students with opportunities for accelerated learning through dual credit coursework leading to at least six postsecondary credits and have as a collective goal to graduate every student with postsecondary credit;

“(8) Georgia’s strategic industries must be partners in our public education system (secondary and postsecondary) so that they are assured that our high school graduates are prepared for success in the workforce;

“(9) Georgia’s public education system must incorporate many different types of assessments and certificates into their programs so that a student’s skill level is assessed and that it also has meaning to them for postsecondary and career success; and

“(10) Georgia’s students must understand that a high school diploma and some form of postsecondary credential are key to success in the workforce and earning a family living wage.”

**Law reviews.** — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 115 (2011). For article, “Education: Elementary and Secondary Education,” see 28 Ga. St. U. L. Rev. 115 (2011).

For note on 2007 amendment of this Code section, see 24 Ga. St. U. L. Rev. 121 (2007).

## OPINIONS OF THE ATTORNEY GENERAL

**State charter schools are subject to the control and management of the local board of education.** 2001 Op. Att’y Gen. No. 2001-9.

**Teachers at charter schools shall be members of the Teachers Retirement System.** 1999 Op. Att’y Gen. No. U99-4.



**RESEARCH REFERENCES**

**ALR.** — Validity, construction, and application of statute or regulation governing charter schools, 78 ALR5th 533.

**20-2-2066. Admission, enrollment, and withdrawal of students.**

(a) A local charter school shall enroll students in the following manner:

(1)(A) A start-up charter school shall enroll any student who resides in the charter attendance zone as specified in the charter and who submits a timely application as specified in the charter unless the number of applications exceeds the capacity of a program, class, grade level, or building. In such case, all such applicants shall have an equal chance of being admitted through a random selection process unless otherwise prohibited by law; provided, however, that a start-up charter school may give enrollment preference to applicants in any one or more of the following categories in the order of priority specified in the charter:

(i) A sibling of a student enrolled in the start-up charter school;

(ii) A sibling of a student enrolled in another local school designated in the charter;

(iii) A student whose parent or guardian is a member of the governing board of the charter school or is a full-time teacher, professional, or other employee at the charter school; and

(iv) Students matriculating from a local school designated in the charter;

(B) A conversion charter school shall enroll any student who resides in the attendance zone specified in the charter and who submits a timely application as specified in the charter. If the number of applying students who reside in the attendance zone does not exceed the capacity as specified in the charter, additional students shall be enrolled based on a random selection process; provided, however, that enrollment preferences may be given to applicants in any one or more of the following categories in the order of priority specified in the charter:

(i) A sibling of a student enrolled in the charter school or in any school in the high school cluster;

(ii) Students whose parent or guardian is a member of the governing board of the charter school or is a full-time teacher, professional, or other employee at the charter school;

(iii) Students who were enrolled in the local school prior to its becoming a charter school; and

(iv) Students who reside in the charter attendance zone specified in the charter; and

(2) A student who resides outside the school system in which the local charter school is located may not enroll in that local charter school except pursuant to a contractual agreement between the local boards of the school system in which the student resides and the school system in which the local charter school is located. Unless otherwise provided in such contractual agreement, a local charter school may give enrollment preference to a sibling of a nonresident student currently enrolled in the local charter school.

(b) A state chartered special school shall enroll any student who resides in the attendance zone specified in the charter and who submits a timely application as specified in the charter unless the number of applications exceeds the capacity of a program, class, grade level, or building. The period of time during which an application for enrollment may be submitted shall be specified in the charter. In such case, all such applicants shall have an equal chance of being admitted through a random selection process unless otherwise prohibited by law; provided, however, that a state chartered special school may give enrollment preference to a child of a full-time teacher, professional, or other employee of the state chartered special school as provided for in subsection (b) of Code Section 20-2-293 or to a sibling of a student currently enrolled in the state chartered special school.

(b.1) A charter system shall enroll students in its system charter schools per the terms of the charter and in accordance with state board rules.

(c) A charter school shall not discriminate on any basis that would be illegal if used by a school system.

(d) A student may withdraw without penalty from a charter school at any time and enroll in a local school in the school system in which such student resides as may be provided for by the policies of the local board. A student who is suspended or expelled from a charter school as a result of a disciplinary action taken by a charter school shall be entitled to enroll in a local school within the local school system in which the student resides, if, under the disciplinary policy of the local school system, such student would not have been subject to suspension or expulsion for the conduct which gave rise to the suspension or expulsion. In such instances, the local board shall not be required to independently verify the nature or occurrence of the applicable conduct or any evidence relating thereto. (Code 1981, § 20-2-2066, enacted by Ga. L. 1998, p. 1080, § 3; Ga. L. 2002, p. 388, § 1; Ga. L. 2005, p. 798, § 13/SB 35; Ga. L. 2007, p. 185, § 9/SB 39.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2005, a comma was inserted following “provided” in the second sentence of the introductory language in subparagraph (a)(1)(B).

**Editor’s notes.** — Ga. L. 2007, p. 185, § 1/SB 39, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Charter Systems Act.’”

Ga. L. 2007, p.185, § 2/SB 39, not codified by the General Assembly, provides: “The General Assembly finds that schools and school systems should be given high flexibility to tailor their educational pro-

grams to meet the unique needs of their communities. In furtherance of this, schools and school systems should be encouraged to use innovative educational programs including local management of schools and should be provided resources to help design and implement innovative programs. The General Assembly further finds that schools and school systems shall be held accountable for student achievement.”

**Law reviews.** — For note on 2007 amendment of this Code section, see 24 Ga. St. U. L. Rev. 121 (2007).

## **20-2-2067. Reprisals by local boards or school system employees prohibited.**

A local board of education or a school system employee who has control over personnel actions shall not take unlawful reprisal against another employee of the school system because such other employee is directly or indirectly involved with a petition to establish a charter school. A local board of education or a school system employee shall not take unlawful reprisal against an educational program of any school or school system because a petition to establish a charter school proposes the conversion of such educational program to a charter school. As used in this Code section, the term “unlawful reprisal” means an action taken by a local board of education or a school system employee as a direct result of a lawful petition to establish a charter school which action is adverse to another employee and which is not lawfully taken in response to any action or behavior of such employee or is adverse to an educational program of the school or the school system and:

(1) With respect to such other employee, results in one or more of the following:

- (A) Disciplinary or corrective action;
- (B) Transfer or reassignment, whether temporary or permanent;
- (C) Suspension, demotion, or dismissal;
- (D) An unfavorable performance evaluation;
- (E) A reduction in pay, benefits, or awards;
- (F) Elimination of the employee’s position without a reduction in force by reason of lack of moneys or work; or

(G) Other significant changes in duties or responsibilities that are inconsistent with the employee’s salary or employment classification; or



(2) With respect to an educational program, results in one or more of the following:

- (A) Suspension or termination of the educational program;
- (B) Transfer or reassignment of the educational program to a less favorable department;
- (C) Relocation of the educational program to a less favorable site within the school or school system; or
- (D) Significant reduction or termination of funding for the educational program, unless necessitated by unfunded mandates from federal or state decisions which result in a significant reduction in funds available to the local board of education and which result in a proportionate loss of funding for all schools in the system. (Code 1981, § 20-2-2067, enacted by Ga. L. 1998, p. 1080, § 3; Ga. L. 1999, p. 81, § 20; Ga. L. 2002, p. 388, § 1.)

**20-2-2067.1. Amendment of terms of charter for charter school; initial term of charter; annual report.**

(a) The terms of a charter for a local charter school may be amended during the term of the charter upon the approval of the local board, the state board, and the charter school. The terms of a charter for a state chartered special school may be amended during the term of the charter upon the approval of the state board and the charter school. The terms of a charter for a charter system may be amended during the term of the charter upon approval of the state board and the local board.

(b) The initial term of a charter, except for a charter system, shall be for a minimum of five years, unless the petitioner shall request a shorter period of time, and shall not exceed ten years. The local board and the state board, in accordance with Code Section 20-2-2064.1, may renew a local charter, upon the request of the charter school, for the period of time specified in the request, not to exceed ten years. The state board may renew a state chartered special school, upon the request of the school, for the period of time specified in the request, not to exceed ten years. The initial term of a charter for a charter system shall not exceed five years. The state board may renew the charter of a charter system, upon the request of the local board, for the period of time specified in the request, not to exceed ten years.

(c) Each start-up and conversion charter school and each charter system shall submit an annual report outlining the previous year's progress to the authorizing local board or state board, as appropriate; to parents and guardians of students enrolled in the school, or, for a charter system, to parents and guardians of students enrolled in school within the local school system; and to the Department of Education no

later than October 1 of each year. The report submitted by a charter system shall include, but not limited to, data on all of its system charter schools. The report shall contain, but is not limited to:

(1) An indication of progress toward the goals as included in the charter;

(2) Academic data for the previous year, including state academic accountability data, such as standardized test scores and adequate yearly progress data;

(3) Unaudited financial statements for the fiscal year ending on June 30, provided that audited statements will be forwarded to the local board and state board upon completion;

(4) Updated contact information for the school and the administrator, and for charter systems, each system charter school and its respective administrator;

(5) Proof of current nonprofit status, if applicable;

(6) Any other supplemental information that the charter school or charter system chooses to include or that the state board requests that demonstrates that school or system's success; and

(7) For charter systems, an on-site external evaluation of the system at least once every five years, as determined by the state board. (Code 1981, § 20-2-2067.1, enacted by Ga. L. 2002, p. 388, § 1; Ga. L. 2005, p. 798, § 14/SB 35; Ga. L. 2007, p. 185, § 10/SB 39.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2005, in subsection (b), "Code Section 20-2-2064.1," was substituted for "Code Section 20-2-2064.1." in the second sentence; in the introductory language in subsection (c), a semicolon was substituted for a comma; and, in paragraph (c)(1), "toward" was substituted for "towards".

**Editor's notes.** — Ga. L. 2007, p. 185, § 1/SB 39, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Charter Systems Act.'"

Ga. L. 2007, p. 185, § 2/SB 39, not codified by the General Assembly, provides: "The General Assembly finds that

schools and school systems should be given high flexibility to tailor their educational programs to meet the unique needs of their communities. In furtherance of this, schools and school systems should be encouraged to use innovative educational programs including local management of schools and should be provided resources to help design and implement innovative programs. The General Assembly further finds that schools and school systems shall be held accountable for student achievement."

**Law reviews.** — For note on 2007 amendment of this Code section, see 24 Ga. St. U. L. Rev. 121 (2007).

## 20-2-2068. Termination of a charter.

(a) The state board may terminate a charter under the following circumstances:

(1)(A) If a majority of the parents or guardians of students enrolled at the charter school vote by a majority vote to request the termination of its charter at a public meeting called with two weeks' advance notice and for the purpose of deciding whether to request the state board to declare the charter null and void; or

(B) If a majority of the faculty and instructional staff employed at the charter school vote by a majority vote to request the termination of its charter at a public meeting called with two weeks' advance notice and for the purpose of deciding whether to request the state board to declare the charter null and void.

This paragraph shall not apply to system charter schools;

(2) If, after providing reasonable notice to the charter school or charter system, as applicable, and an opportunity for a hearing, the state board finds:

(A) A failure to comply with any recommendation or direction of the state board with respect to Code Section 20-14-41;

(B) A failure to adhere to any material term of the charter, including but not limited to the performance goals set forth in the charter;

(C) A failure to meet generally accepted standards of fiscal management;

(D) A violation of applicable federal, state, or local laws or court orders;

(E) The existence of competent substantial evidence that the continued operation of the charter school or charter system would be contrary to the best interests of the students or the community; or

(F) A failure to comply with any provision of Code Section 20-2-2065; or

(3) Upon the written request of a local board for termination of a charter for a local charter school located within its school system if, prior to making such request, the local board provided reasonable notice to the charter school and an opportunity for a hearing, and determined the existence of any of the grounds described in paragraph (2) of this Code section.

(b) For a system charter school, if the school council or governing council, as applicable, at such school within the charter system requests that:

(1) The system charter be terminated; or



(2) The system charter be amended with respect to such system charter school,

the state board, after providing reasonable notice to the charter system and the system charter school, shall conduct a hearing. Based on the findings of the hearing, the state board may enter into negotiations with the charter system to amend the charter to address the concerns of the requesting system charter school. If negotiations fail and the state board finds good cause, the state board shall be authorized to terminate the system charter or to amend the system charter with respect to the requesting system charter school; provided, however, that the local board shall be authorized to terminate the system charter if it is unwilling to accept the amendments to such charter by the state board. The term “good cause” includes but is not limited to a local board’s failure to comply with its obligations and duties under the system charter, state board rules, or other applicable law, or other good cause as determined in the sole discretion of the state board. (Code 1981, § 20-2-2068, enacted by Ga. L. 1998, p. 1080, § 3; Ga. L. 1999, p. 81, § 20; Ga. L. 2002, p. 388, § 1; Ga. L. 2007, p. 185, § 11/SB 39; Ga. L. 2008, p. 324, § 20/SB 455.)

**Editor’s notes.** — Ga. L. 2007, p. 185, § 1/SB 39, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Charter Systems Act.’”

Ga. L. 2007, p. 185, § 2/SB 39, not codified by the General Assembly, provides: “The General Assembly finds that schools and school systems should be given high flexibility to tailor their educational programs to meet the unique needs of their communities. In furtherance of

this, schools and school systems should be encouraged to use innovative educational programs including local management of schools and should be provided resources to help design and implement innovative programs. The General Assembly further finds that schools and school systems shall be held accountable for student achievement.”

**Law reviews.** — For note on 2007 amendment of this Code section, see 24 Georgia St. U.L. Rev. 121 (2007).

## OPINIONS OF THE ATTORNEY GENERAL

**State charter schools could qualify for state grants** pursuant to former subsection (d) of O.C.G.A. § 20-2-2068, and a local system was required to treat a state

charter school no less favorably than other local schools located within the applicable school system. 2001 Op. Att’y Gen. No. 2001-9.

### 20-2-2068.1. Charter school funding.

(a) A local charter school shall be included in the allotment of QBE formula earnings, applicable QBE grants, applicable non-QBE state grants, and applicable federal grants to the local school system in which the local charter school is located under Article 6 of this chapter. The local board and the state board shall treat a conversion charter school no less favorably than other local schools located within the applicable local school system unless otherwise provided by law. The local board

and the state board shall treat a start-up charter school no less favorably than other local schools within the applicable local system with respect to the provision of funds for instruction, school administration, transportation, food services, and, where feasible, building programs.

(b) QBE formula earnings, applicable QBE grants, applicable non-QBE state grants, and applicable federal grants earned by a local charter school shall be distributed to the local charter school by the local board; provided, however, that state equalization grant earnings shall be distributed as provided in subsection (c) of this Code section. QBE formula earnings shall include the salary portion of direct instructional costs, the adjustment for training and experience, the nonsalary portion of direct instructional costs, and earnings for psychologists and school social workers, school administration, facility maintenance and operation, media centers, additional days of instruction in accordance with Code Section 20-2-184.1, and staff development. The local charter school shall report enrolled students in a manner consistent with Code Section 20-2-160.

(c) In addition to the earnings set out in subsection (b) of this Code section, local revenue shall be allocated to a local charter school on the same basis as for any local school in the local school system. In the case of a start-up charter school, local revenue earnings shall be calculated as follows:

- (1) Determine the total amount of state and local five mill share funds earned by students enrolled in the local start-up charter school as calculated by the Quality Basic Education Formula pursuant to Part 4 of Article 6 of this chapter including any funds for psychologists and school social workers but excluding 5 percent of system-wide funds for central administration and excluding any categorical grants not applicable to the charter school;

- (2) Determine the total amount of state and local five mill share funds earned by all students in the public schools of the local school system, including any charter schools that receive local revenue, as calculated by the Quality Basic Education Formula but excluding categorical grants and other non-QBE formula grants;

- (3) Divide the amount obtained in paragraph (1) of this subsection by the amount obtained in paragraph (2) of this subsection; and

- (4) Multiply the quotient obtained in paragraph (3) of this subsection by the school system's local revenue.

The product obtained in paragraph (4) of this subsection shall be the amount of local funds to be distributed to the local start-up charter school by the local board; provided, however, that nothing in this

subsection shall preclude a charter petitioner and a local board of education from specifying in the charter a greater amount of local funds to be provided by the local board to the local start-up charter school if agreed upon by all parties to the charter. Local funds so earned shall be distributed to the local start-up charter school by the local board. Where feasible and where services are provided, funds for construction projects shall also be distributed to the local start-up charter school as earned. In all other fiscal matters, including applicable federal allotments, the local board shall treat the local start-up charter school no less favorably than other local schools located within the applicable school system and shall calculate and distribute the funding for the start-up charter school on the basis of its actual or projected enrollment in the current school year according to an enrollment counting procedure or projection method stipulated in the terms of the charter.

(c.1) The adjustments in each program for training and experience used in calculating the start-up charter school's QBE formula earnings shall be calculated in the same manner as for any local school within the local school system; provided, however, that the adjustments in each program for training and experience used in calculating the start-up charter school's QBE formula earnings shall not be less than one-half of the comparable percentages for the local school system in which the charter school is located.

(c.2) For newly approved local charter schools, including charter renewals, the local board of education may retain an amount of the charter school's per pupil share of state and local funding not to exceed 3 percent of the total funds earned by the charter school to reimburse the local school system for administrative services actually provided to the charter school.

(d)(1) Effective July 1, 2012, except as otherwise provided in paragraph (2) of this subsection, the department shall pay to each state chartered special school through appropriation of state funds an amount equal to the sum of:

(A)(i) QBE formula earnings and QBE grants earned by the state chartered special school based on the school's enrollment, school profile, and student characteristics. For purposes of this subparagraph, the term "QBE formula earnings" means funds earned for the Quality Basic Education Formula pursuant to Code Section 20-2-161, including the portion of such funds that are calculated in accordance with Code Section 20-2-164. QBE formula earnings shall include the salary portion of direct instructional costs, the adjustment for training and experience, the nonsalary portion of direct instructional costs, and earnings for psychologists and school social workers, school administration, facility maintenance and operation, media centers, addi-



tional days of instruction in accordance with Code Section 20-2-184.1, and staff development, as determined by the department; and

(ii) A proportional share of earned state categorical grants, non-QBE state grants, transportation grants, school nutrition grants, and all other state grants, except state equalization grants, as determined by the department;

(B) The average amount of the total revenues less federal revenues less state revenues other than equalization grants per full-time equivalent for the lowest five school systems ranked by assessed valuation per weighted full-time equivalent count, as determined by the department; and

(C) The state-wide average total capital revenue per full-time equivalent, as determined by the department.

(2) In the event that a state chartered special school offers virtual instruction:

(A) The amount of funds received pursuant to subparagraph (B) of paragraph (1) of this subsection shall be equal to two-thirds of such calculated amount; provided, however, that this two-thirds amount may be increased by any amount up to the originally calculated amount in the discretion of the department if relevant factors warrant such increase; and

(B) The department may reduce the amount of funds received pursuant to subparagraph (C) of paragraph (1) of this subsection in proportion to the amount of virtual instruction provided and based on factors that affect the cost of providing instruction.

(3) For purposes of this subsection, the terms:

(A) "Assessed valuation" is defined as 40 percent of the equalized adjusted property tax digest reduced by the amount calculated pursuant to subsection (g) of Code Section 20-2-164.

(B) "Assessed valuation per weighted full-time equivalent count" is defined as the assessed valuation for the most recent year available divided by the weighted full-time equivalent count for the year of the digest.

(4) The department may withhold up to 3 percent of the amount determined pursuant to paragraphs (1) and (2) of this subsection for each state chartered special school for use in administering the duties required pursuant to this article with respect to state chartered special schools; provided, however, that any amount withheld pursuant to this subsection shall be spent solely on expenses incurred by

the department in performing the duties required by this article with respect to state chartered special schools.

(5) No deduction shall be made to any state funding which a local school system is otherwise authorized to receive pursuant to this chapter as a direct result or consequence of the enrollment in a state chartered special school of a specific student or students who reside in the geographical area of the local school system.

(6) Funding for state chartered special schools pursuant to this subsection shall be subject to appropriations by the General Assembly and such schools shall be treated consistently with all other public schools in this state, pursuant to the respective statutory funding formulas and grants.

(7) The local board shall not be responsible for the fiscal management, accounting, or oversight of the state chartered special school. The state chartered special school shall report enrolled students in a manner consistent with Code Section 20-2-160. Any data required to be reported by the state chartered special school shall be submitted directly by the school to the appropriate state agency. Where feasible, the state board shall treat a state chartered special school no less favorably than other public schools within the state with respect to the provision of funds for transportation and building programs.

(e) The state board may require a local referendum of the qualified voters in the local school system in which the state chartered special school will be located. Such referendum shall be held at the next regularly scheduled general election or as may otherwise be authorized at an earlier date by the local board or boards of education affected. Such referendum shall be held for the purpose of deciding whether the local board of education shall provide funds from school tax levies to support such state chartered special school or incur bonded indebtedness to support such state chartered special school or both. The ballot question shall be approved by the state board.

(f) The local board shall treat a state chartered special school for which the use of funds from local bonded indebtedness and local school tax levies has been approved by qualified voters in the system in accordance with subsection (e) of this Code section no less favorably than other public schools located within the applicable school system.

(g) The local board shall not distribute funds from local bond indebtedness and local school tax levies to a state chartered special school unless such use has been approved by qualified voters in accordance with subsection (e) of this Code section.

(h) For system charter schools, funds including federal, state, and local revenue shall be distributed to each such school by the charter

system in a manner and in such amounts as are provided in the terms of the charter with an objective of maximizing spending at the school level. (Code 1981, § 20-2-2068.1, enacted by Ga. L. 2002, p. 388, § 1; Ga. L. 2005, p. 798, § 15/SB 35; Ga. L. 2007, p. 185, §§ 12, 13/SB 39; Ga. L. 2008, p. 603, § 2/HB 881; Ga. L. 2009, p. 8, § 20/SB 46; Ga. L. 2012, p. 1298, § 2A/HB 797.)

**The 2012 amendment**, effective July 1, 2012, rewrote subsection (d), which read: “QBE formula earnings, applicable QBE grants, applicable non-QBE state grants, and applicable federal grants that are earned by a state chartered special school shall be distributed to the local board of the local school system in which the state chartered special school is located which shall distribute the same amount to the state chartered special school; provided, however, that a state chartered special school shall not be included in the calculation and distribution of the local school system’s equalization grant unless the voters of the local school system have approved the use of revenue from local tax levies and funds from local bonded indebtedness to support the state chartered special school in accordance with subsection (e) of this Code section. If such approval has been given, state equalization grant earnings shall be earned for the state chartered special school and shall be distributed as provided in subsection (f) of this Code section. The local board shall not be responsible for the fiscal management, accounting, or oversight of the state chartered special school. The state chartered special school shall report enrolled students in a manner consistent with Code Section 20-2-160. Any data required to be reported by the state chartered special school shall be submitted directly by the school to the appropriate state agency. Where feasible, the state board shall treat a state chartered special school no less favorably than other public schools within the state with respect to the provision of funds for transportation and building programs.”

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2009, “non-QBE” was substituted for “nonQBE” in the first sentence of subsection (b).

Pursuant to Code Section 28-9-5, in 2012, “; and” was substituted for a period at the end of division (d)(1)(A)(i).

**Editor’s notes.** — Ga. L. 2007, p. 185, § 1/SB 39, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Charter Systems Act.’”

Ga. L. 2007, p. 185, § 2/SB 39, not codified by the General Assembly, provides: “The General Assembly finds that schools and school systems should be given high flexibility to tailor their educational programs to meet the unique needs of their communities. In furtherance of this, schools and school systems should be encouraged to use innovative educational programs including local management of schools and should be provided resources to help design and implement innovative programs. The General Assembly further finds that schools and school systems shall be held accountable for student achievement.”

Ga. L. 2007, p. 185, § 15/SB 39, not codified by the General Assembly, provides: “Section 12 of this Act shall become effective on July 1, 2008 and shall apply beginning in the 2008-2009 school year and every year thereafter; provided, however, local school systems shall plan for such changes to the law pursuant to Section 12 of this Act and take all necessary measures with regard to budgeting prior to such effective date.”

**Law reviews.** — For note on 2007 amendment of this Code section, see 24 Ga. St. U.L. Rev. 121 (2007).

## OPINIONS OF THE ATTORNEY GENERAL

**State charter schools can qualify for state grants** and a local system is

required to treat a state charter school no less favorably than other local schools



located within the applicable school system. 2001 Op. Att'y Gen. No. 2001-9.

**20-2-2068.2. Facilities fund for charter schools; purposes for which funds may be used; upkeep of charter school property; availability of unused facilities.**

(a) From moneys specifically appropriated for such purpose, the state board shall create a facilities fund for local charter schools, state chartered special schools, and commission charter schools as defined in Code Section 20-2-2081 for the purpose of establishing a per pupil, need based facilities aid program.

(b) A charter school or commission charter school may receive moneys from the facilities fund if the charter school or commission charter school has received final approval from the Georgia Charter Schools Commission or from the state board for operation during that fiscal year.

(c) A charter school's or commission charter school's governing body may use moneys from the facilities fund for the following purposes:

(1) Purchase of real property;

(2) Construction of school facilities, including initial and additional equipment and furnishings;

(3) Purchase, lease-purchase, or lease of permanent or relocatable school facilities;

(4) Purchase of vehicles to transport students to and from the charter school or commission charter school; and

(5) Renovation, repair, and maintenance of school facilities that the school owns or is purchasing through a lease-purchase or long-term lease of five years or longer.

(d) The Department of Education shall specify procedures for submitting and approving requests for funding under this Code section and for documenting expenditures.

(e) Local boards are required to renovate, repair, and maintain the school facilities of charter schools in the district to the same extent as other public schools in the district if the local board owns the charter school facility, unless otherwise agreed upon by the petitioner and the local board in the charter.

(f)(1) Prior to releasing moneys from the facilities fund, the Department of Education shall ensure that the governing board of the local charter school and the local board shall enter into a written agreement that includes a provision for the reversion of any unencumbered

funds and all equipment and property purchased with public education funds to the ownership of the local board in the event the local charter school terminates operations.

(2) Prior to releasing moneys from the facilities fund, the Department of Education shall ensure that the governing board of the state chartered special school and the state board shall enter into a written agreement that includes a provision for the reversion of any unencumbered funds and all equipment and property purchased with public education funds to the ownership of the state board in the event the state chartered special school terminates operations.

(3) Prior to releasing moneys from the facilities fund, the Department of Education shall ensure that the governing board of the commission charter school and the Georgia Charter Schools Commission shall enter into a written agreement that includes a provision for the reversion of any unencumbered funds and all equipment and property purchased with public education funds to the ownership of the Georgia Charter Schools Commission in the event the commission charter school terminates operations.

(g) The reversion of property in accordance with subsection (f) of this Code section is subject to the complete satisfaction of all lawful liens or encumbrances.

(h) Each local board of education shall make its unused facilities available to local charter schools. The terms of the use of such a facility by the charter school shall be subject to negotiation between the board and the local charter school and shall be memorialized as a separate agreement. A local charter school that is allowed to use such a facility under such an agreement shall not sell or dispose of any interest in such property without the written permission of the local board. A local charter school may not be charged a rental or leasing fee for the existing facility or for property normally used by the public school which became the local charter school. A local charter school that receives property from a local board may not sell or dispose of such property without the written permission of the local board. (Code 1981, § 20-2-2068.2, enacted by Ga. L. 2004, p. 107, § 19C; Ga. L. 2005, p. 798, § 16/SB 35; Ga. L. 2009, p. 727, § 1/HB 555.)

### **20-2-2069. Office of Charter School Compliance.**

There is established within the Department of Education an Office of Charter School Compliance, the responsibilities of which shall be to:

(1) Prepare charter school and charter system guidelines to be approved by the state board;

(2) Distribute charter school and charter system petition information to inquiring parties;

(3) Process all charter school and charter system petitions and coordinate with the Charter Advisory Committee established pursuant to Code Section 20-2-2063.1 to facilitate its review and recommendations to the state board;

(4) Administer any state or federal charter school implementation grant program;

(5) Contract with an independent party to evaluate the performance of charter schools and charter systems, as such performance relates to fulfilling the terms of their charters; and

(6) Compile information necessary to produce the annual report required by Code Section 20-2-2070. (Code 1981, § 20-2-2069, enacted by Ga. L. 1998, p. 1080, § 3; Ga. L. 2007, p. 185, § 14/SB 39.)

**Editor's notes.** — Ga. L. 2007, p. 185, § 1/SB 39, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Charter Systems Act.'"

Ga. L. 2007, p. 185, § 2/SB 39, not codified by the General Assembly, provides: "The General Assembly finds that schools and school systems should be given high flexibility to tailor their educational programs to meet the unique needs of their communities. In furtherance of

this, schools and school systems should be encouraged to use innovative educational programs including local management of schools and should be provided resources to help design and implement innovative programs. The General Assembly further finds that schools and school systems shall be held accountable for student achievement."

**Law reviews.** — For note on 2007 amendment of this Code section, see 24 Georgia St. U.L. Rev. 121 (2007).

## 20-2-2070. Annual report to General Assembly.

The state board shall report to the General Assembly no later than December 31 of each year on the status of the charter school program. (Code 1981, § 20-2-2070, enacted by Ga. L. 1998, p. 1080, § 3; Ga. L. 2005, p. 798, § 17/SB 35.)

## 20-2-2071. Validity of charters in effect on July 1, 1998.

Any charter which was granted pursuant to Code Section 20-2-255 and is in effect on July 1, 1998, shall continue to be valid until such charter expires according to its terms. (Code 1981, § 20-2-2071, enacted by Ga. L. 1998, p. 1080, § 3.)

# ARTICLE 31A

## GEORGIA CHARTER SCHOOLS COMMISSION

**Editor's notes.** — Ga. L. 2012, p. 1298, § 3/HB 797, not codified by the General Assembly, provides that this article shall be repealed effective January 1, 2013, and

that a new article shall be enacted, which is set out following this version, only if a Constitutional amendment expressly authorizing the General Assembly to create



state charter schools as special schools is ratified at the November 2012, general election.

**JUDICIAL DECISIONS**

**Constitutionality.** — Georgia Charter Schools Commission Act, O.C.G.A. § 20-2-2081 et seq., violated the special schools provision of Ga. Const. 1983, Art. VIII, Sec. V, Para. VII(a) by authorizing a state commission to establish competing state-created general K-12 schools under the guise of being special schools. The special schools authorized by the constitu-

tion were not competitors with locally controlled schools in regard to the education of general K-12 students; rather, the constitutionally significant matters that made a school “special” were directly related to the school itself, the school’s student body and the school’s curriculum. *Gwinnett County Sch. Dist. v. Cox*, 289 Ga. 265, 710 S.E.2d 773 (2011).

**OPINIONS OF THE ATTORNEY GENERAL**

**Membership in the Teachers Retirement System.** — Unless and until the General Assembly adopts clarifying legislation, it is within the sound discretion of the Teachers Retirement System Board of Trustees to determine whether

teachers who are employed not less than half-time by commission charter schools must be members of the Teachers Retirement System. 2010 Op. Att’y Gen. No. 2010-5.

**20-2-2080. (For effective date, see note) Legislative findings.**

(a) The General Assembly finds that:

- (1) Charter schools are a critical component in this state’s efforts to provide efficient and high-quality schools within this state’s uniform system of public education;
- (2) Charter schools provide valuable educational options and learning opportunities while expanding the capacity of this state’s system of public education and empowering parents with the ability to make choices that best fit the individual needs of their children; and
- (3) The growth of charter schools in this state has contributed to enhanced student performance, greater efficiency, and increased parental satisfaction.

(b) It is the intent of the General Assembly that:

- (1) There be established a state-level commission whose primary focus is the development and support of charter schools in order to better meet the growing and diverse needs of some of the increasing number and array of charter schools in this state and to further ensure that charter schools of the highest academic quality are approved and supported throughout the state in an efficient manner; and

(2) New sources of community support from cosponsors should be authorized to participate in developing and supporting charter schools, with the goal of maximizing access to a wide variety of high-quality educational options for all students regardless of disability, race, or socioeconomic status, including those students who have struggled in a traditional public school setting. (Code 1981, § 20-2-2080, enacted by Ga. L. 2008, p. 603, § 1/HB 881.)

**Editor's notes.** — For information as to the delayed, contingent repeal of this Code section, see the editor's note at the beginning of this article.

## 20-2-2081. (For effective date, see note) Definitions.

As used in this article, the term:

(1) "Commission" means the Georgia Charter Schools Commission established pursuant to Code Section 20-2-2082.

(2) "Commission charter school" means a charter school authorized by the commission pursuant to this article whose creation is authorized as a special school pursuant to Article VIII, Section V, Paragraph VII of the Constitution. A commission charter school shall exist as a public school within the state as a component of the delivery of public education within Georgia's K-12 education system.

(3) "Cosponsor" means a municipality, county, consolidated government, university or college of the board of regents, technical institution of the Technical College System of Georgia, or regional educational service agency which has been authorized by the commission pursuant to Code Section 20-2-2083.

(4) "Department" means the state Department of Education.

The definitions set forth in Code Section 20-2-2062 shall be applicable to this article. (Code 1981, § 20-2-2081, enacted by Ga. L. 2008, p. 603, § 1/HB 881.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2008, "Technical College System of Georgia" was substituted for "Department of Technical and Adult Education" in paragraph (3).

**Editor's notes.** — For information as to the delayed, contingent repeal of this Code section, see the editor's note at the beginning of this article.

## JUDICIAL DECISIONS

**Constitutionality.** — Georgia Charter Schools Commission Act, O.C.G.A. § 20-2-2081 et seq., violated the special schools provision of Ga. Const. 1983, Art. VIII, Sec. V, Para. VII(a) by authorizing a state commission to establish competing

state-created general K-12 schools under the guise of being special schools. The special schools authorized by the constitution were not competitors with locally controlled schools in regard to the education of general K-12 students; rather, the

constitutionally significant matters that made a school “special” were directly related to the school itself, the school’s stu-

dent body and the school’s curriculum. *Gwinnett County Sch. Dist. v. Cox*, 289 Ga. 265, 710 S.E.2d 773 (2011).

**20-2-2082. (For effective date, see note) Establishment of Georgia Charter Schools Commission; appointment of commission members; meetings; role; compensation.**

(a) The Georgia Charter Schools Commission is established as a state-level charter school authorizing entity working in collaboration with the Department of Education. Startup funds necessary to establish and operate the commission may be received by the State Board of Education in addition to such other funds as may be appropriated by the General Assembly. The department shall assist in securing federal and other institutional grant funds to establish the commission.

(b) The commission shall be appointed by the State Board of Education and shall be composed of a total of seven members and made up of three appointees recommended by the Governor, two appointees recommended by the President of the Senate, and two appointees recommended by the Speaker of the House of Representatives. The Governor, the President of the Senate, and the Speaker of the House of Representatives shall each recommend a list of no fewer than two nominees for each appointment to the commission. The appointments shall be made as soon as feasible but no later than September 1, 2008. Each member shall serve a term of two years; however, for the purpose of providing staggered terms, of the initial appointments, three members shall be appointed to one-year terms and four members shall be appointed to two-year terms as determined by the State Board of Education. Thereafter, each appointee shall serve a two-year term unless the State Board of Education, after review and upon recommendation by the initial recommending authority, extends the appointment. If a vacancy occurs on the commission, it shall be filled by the State Board of Education from a recommendation by the appropriate authority according to the procedure set forth in this subsection. The members of the commission shall annually vote to appoint a chairperson and a vice chairperson from among its membership. Each member of the commission shall hold a bachelor’s degree or higher, and the commission should include a group of diverse individuals representative of Georgia’s school population who has experience in finance, administration, law, education, public school teaching, and school governance.

(c) The commission is encouraged to convene its first meeting no later than October 1, 2008, and thereafter shall meet at least bimonthly at the call of the chairperson or upon the request of four members of the commission. Four members of the commission shall constitute a quorum.



(d) The commission shall determine the manner in which it reviews commission charter school petitions and may, in its discretion, use existing department personnel to conduct such review.

(e) The members of the commission shall not be compensated for their services on the commission but may be reimbursed for per diem and travel expenses in the same manner as provided for in Code Section 45-7-21. (Code 1981, § 20-2-2082, enacted by Ga. L. 2008, p. 603, § 1/HB 881.)

**Editor's notes.** — For information as to the delayed, contingent repeal of this Code section, see the editor's note at the beginning of this article.

JUDICIAL DECISIONS

**Constitutionality.** — Georgia Charter Schools Commission Act, O.C.G.A. § 20-2-2081 et seq., violated the special schools provision of Ga. Const. 1983, Art. VIII, Sec. V, Para. VII(a) by authorizing a state commission to establish competing state-created general K-12 schools under the guise of being special schools. The special schools authorized by the constitution were not competitors with locally controlled schools in regard to the education of general K-12 students; rather, the constitutionally significant matters that made a school “special” were directly related to the school itself, the school’s student body and the school’s curriculum. *Gwinnett County Sch. Dist. v. Cox*, 289 Ga. 265, 710 S.E.2d 773 (2011).

**20-2-2083. (For effective date, see note) Power and duties of the commission.**

- (a) The commission shall have the power to:
  - (1) Approve or deny petitions for commission charter schools and renew, nonrenew, or terminate commission charter school petitions in accordance with State Board of Education rules and regulations established pursuant to this article. At its discretion, the commission may preliminarily approve a charter petition for a commission charter school before the petitioner has secured space, equipment, or personnel, if the petitioner indicates such preliminary approval is necessary for it to raise working capital. The State Board of Education may overrule the approval, denial, renewal, nonrenewal, or termination of a commission charter school by the commission within 60 days of such decision by the commission upon a vote of at least two-thirds of the members of the state board; provided, however, that a commission charter school petitioner may re-apply to the commission for approval or renewal after remedying any deficiencies cited by the State Board of Education;
  - (2) Authorize cosponsors of commission charter schools; and
  - (3) Conduct facility and curriculum reviews of commission charter schools.

(b) The commission shall have the following duties:

(1) Review charter school petitions for commission charter schools and assist in the establishment of commission charter schools throughout this state. The commission shall ensure that all charters for commission charter schools are consistent with state education goals;

(2) Develop, promote, and disseminate best practices for charter schools and charter school cosponsors in order to ensure that high-quality charter schools are developed and encouraged. At a minimum, the best practices shall encourage the development and replication of academically and financially proven charter school programs;

(3) Develop, promote, and require high standards of accountability for commission charter schools. The commission shall ensure that each commission charter school participates in the state's education accountability system. If a commission charter school falls short of performance measures included in the approved charter, the commission shall report such shortcomings to the Department of Education;

(4) Monitor and annually review the performance of cosponsors;

(5) Monitor and annually review and evaluate the academic and financial performance, including revenues and expenditures, of commission charter schools and hold the schools accountable for their performance pursuant to the charter and to the provisions of this article. The commission's duties to monitor the charter school shall not constitute the basis for a private cause of action;

(6) Report to each local school system the number of students who reside in such school system and are enrolled in a commission charter school;

(7) Work with its cosponsors to monitor the financial management of each commission charter school;

(8) Direct charter schools and persons seeking to establish charter schools to sources of private funding and support;

(9) Actively seek, with the assistance of the department, supplemental revenue from federal grant funds, institutional grant funds, and philanthropic organizations. The commission may, through the State Board of Education, receive and expend gifts, grants, and donations of any kind from any public or private entity to carry out the purposes of this article;

(10) Review and recommend to the General Assembly any necessary revisions to statutory requirements regarding standards and accountability for commission charter schools;

(11) Act as liaison for cosponsors and commission charter schools in cooperating with local boards of education that may choose to allow commission charter schools to utilize excess space within school facilities;

(12) Collaborate with cosponsors for the purpose of providing the highest level of public education to all students, including, but not limited to, low-income, low-performing, gifted, and underserved student populations and to students with special needs. Such collaborations shall:

(A) Allow universities and colleges of the board of regents and technical institutions of the Technical College System of Georgia that cosponsor commission charter schools to enable students attending a commission charter school to take college courses and receive high school and college credit for such courses; and

(B) Assist in determining the feasibility of establishing commission charter schools for students with disabilities;

(13) Meet the needs of commission charter schools and local school systems by uniformly administering high-quality commission charter schools, thereby removing administrative burdens from the local school systems;

(14) Assist commission charter schools in negotiating and contracting with local boards of education that choose to provide certain administrative or transportation services to the charter schools on a contractual basis; and

(15) Provide training for members of commission charter school governing bodies after approval of the charter school. The training shall include, but not be limited to, best practices on charter school governance, the constitutional and statutory requirements relating to public records and meetings, and the requirements of applicable statutes and State Board of Education rules. (Code 1981, § 20-2-2083, enacted by Ga. L. 2008, p. 603, § 1/HB 881.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2008, “Technical College System of Georgia” was substituted for “Department of Technical and Adult Education” in subparagraph (b)(12)(A).

**Editor’s notes.** — For information as to the delayed, contingent repeal of this Code section, see the editor’s note at the beginning of this article.

## JUDICIAL DECISIONS

**Constitutionality.** — Georgia Charter Schools Commission Act, O.C.G.A. § 20-2-2081 et seq., violated the special schools provision of Ga. Const. 1983, Art.

VIII, Sec. V, Para. VII(a) by authorizing a state commission to establish competing state-created general K-12 schools under the guise of being special schools. The



special schools authorized by the constitution were not competitors with locally controlled schools in regard to the education of general K-12 students; rather, the constitutionally significant matters that

made a school “special” were directly related to the school itself, the school’s student body and the school’s curriculum. Gwinnett County Sch. Dist. v. Cox, 289 Ga. 265, 710 S.E.2d 773 (2011).

**20-2-2084. (For effective date, see note) Applications for cosponsorships; defining role of cosponsors.**

(a) The commission shall begin accepting applications to act as cosponsors no later than January 31, 2009. The commission shall review and evaluate all applications in accordance with commission rules and regulations established pursuant to this article to encourage technical assistance, academic support, curriculum review, financial assistance, or other support from cosponsors.

(b) Cosponsors shall have no authority to authorize charter schools. Cosponsors may partner with charter petitioners and the commission to provide community support for the proposed charter school. This support may include technical assistance, academic support, curriculum review, financial assistance, or other support as agreed to between the cosponsor and the commission charter school.

(c) Upon approval of a cosponsor, the commission and the cosponsor shall enter into an agreement that defines the cosponsor’s rights and obligations. (Code 1981, § 20-2-2084, enacted by Ga. L. 2008, p. 603, § 1/HB 881.)

**Editor’s notes.** — For information as to the delayed, contingent repeal of this Code section, see the editor’s note at the beginning of this article.

**JUDICIAL DECISIONS**

**Cited in** Gwinnett County Sch. Dist. v. Cox, 289 Ga. 265, 710 S.E.2d 773 (2011).

**20-2-2085. (For effective date, see note) Petition requirements for commission charter school.**

(a) Charter school petitions submitted to the commission shall be subject to State Board of Education rules and regulations established pursuant to this article and as otherwise applicable to charter schools.

(b) A petitioner for a commission charter school shall submit a petition for a start-up charter school to the local board of education in which the school is to be located and to each local school system from which the commission charter school plans to enroll students prior to or concurrently with a corresponding petition to the commission unless the proposed commission charter school plans to enroll students from five or more counties; provided, however, that the commission shall not

act on the commission charter school petition until the local board of education or local boards of education have had the opportunity to approve or deny the petition for a start-up charter school in accordance with State Board of Education rules and regulations. Local board of education approval or denial of a start-up charter school petition shall not preclude the petitioner from seeking authorization from the commission. A petitioner shall not be required to seek authorization from the commission for a commission charter school if the local board of education or local boards of education approve the petition for a start-up charter school; provided, however, that such start-up charter school shall be governed by Article 31 of this chapter. The commission shall take into consideration any support or opposition by the local board of education or local boards of education on a start-up charter school petition when it votes to approve or deny a corresponding commission charter school petition. (Code 1981, § 20-2-2085, enacted by Ga. L. 2008, p. 603, § 1/HB 881.)

**Editor’s notes.** — For information as to the delayed, contingent repeal of this Code section, see the editor’s note at the beginning of this article.

JUDICIAL DECISIONS

**Cited in** Gwinnett County Sch. Dist. v. Cox, 289 Ga. 265, 710 S.E.2d 773 (2011).

**20-2-2086. (For effective date, see note) Petition from existing charter schools.**

A petition may be submitted pursuant to this Code section by an existing charter school approved by a local board of education or the State Board of Education provided that the obligations of its charter with the local board of education or State Board of Education will expire prior to entering into a new charter with the commission. A local board of education or the State Board of Education in the case of a state chartered special school may agree to rescind or waive the obligations of a current charter to allow a petition to be submitted by an existing charter school pursuant to this Code section. An existing charter school that is established as a commission charter school pursuant to this Code section shall be allowed to continue the use of all facilities, equipment, and other assets it used prior to the expiration or rescission of its charter with a local board of education. (Code 1981, § 20-2-2086, enacted by Ga. L. 2008, p. 603, § 1/HB 881.)

**Editor’s notes.** — For information as to the delayed, contingent repeal of this Code section, see the editor’s note at the beginning of this article.

JUDICIAL DECISIONS

**Cited** in Gwinnett County Sch. Dist. v. Cox, 289 Ga. 265, 710 S.E.2d 773 (2011).

**20-2-2087. (For effective date, see note) Maximum access to information by parents.**

The commission shall provide maximum access to information regarding commission charter schools to all parents in this state. It shall maintain information systems, including, but not limited to, a user-friendly Internet website, that will provide information and data necessary for parents to make informed decisions. At a minimum, the commission shall provide parents with information on its accountability standards, links to commission charter schools throughout this state, and public education programs concerning commission charter schools. (Code 1981, § 20-2-2087, enacted by Ga. L. 2008, p. 603, § 1/HB 881.)

**Editor’s notes.** — For information as to the delayed, contingent repeal of this Code section, see the editor’s note at the beginning of this article.

JUDICIAL DECISIONS

**Cited** in Gwinnett County Sch. Dist. v. Cox, 289 Ga. 265, 710 S.E.2d 773 (2011).

**20-2-2088. (For effective date, see note) Annual report to State Board of Education.**

Each year, the chairperson of the commission shall appear before the State Board of Education and submit a report regarding the academic performance and fiscal responsibility of all commission charter schools and cosponsors approved under this article. (Code 1981, § 20-2-2088, enacted by Ga. L. 2008, p. 603, § 1/HB 881.)

**Editor’s notes.** — For information as to the delayed, contingent repeal of this Code section, see the editor’s note at the beginning of this article.

JUDICIAL DECISIONS

**Cited** in Gwinnett County Sch. Dist. v. Cox, 289 Ga. 265, 710 S.E.2d 773 (2011).

**20-2-2089. (For effective date, see note) Financial responsibility.**

If a charter is not renewed or is terminated, the commission charter school shall be responsible for all debts of such charter school. The local school system may not assume the debt from any contract for services



made between the governing body of the commission charter school and a third party, except for a debt for which the local school system has agreed upon in writing to assume responsibility. (Code 1981, § 20-2-2089, enacted by Ga. L. 2008, p. 603, § 1/HB 881.)

**Editor's notes.** — For information as to the delayed, contingent repeal of this Code section, see the editor's note at the beginning of this article.

### JUDICIAL DECISIONS

**Cited** in Gwinnett County Sch. Dist. v. Cox, 289 Ga. 265, 710 S.E.2d 773 (2011).

### **20-2-2090. (For effective date, see note) Funding for commission charter schools.**

(a) The Department of Education shall pay to each commission charter school through appropriation of state and federal funds an amount equal to the sum of:

(1) QBE formula earnings, QBE grants, and federal grants earned by the commission charter school based on the school's enrollment, school profile, and student characteristics. QBE formula earnings shall include the salary portion of direct instructional costs, the adjustment for training and experience, the nonsalary portion of direct instructional costs, and earnings for psychologists and school social workers, school administration, facility maintenance and operation, media centers, additional days of instruction in accordance with Code Section 20-2-184.1, and staff development. For purposes of this paragraph, QBE formula earnings shall not include the additional amount provided for in Code Section 20-2-165.1 earned by a charter system for full-time equivalent students in its schools;

(2) A proportional share of state categorical grants, non-QBE state grants, state equalization grants, and all other state and federal grants; and

(3)(A) An amount determined by the commission for each student enrolled in such school equal to a proportional share of local revenue from the local school system in which the student attending the commission charter school resides; provided, however, that the commission may reduce the amount calculated pursuant to this paragraph based on factors that affect the cost of providing instruction.

(B) In making the funding determination required pursuant to this paragraph, the commission shall take into account the following factors:

(i) In the case of a commission charter school that draws students from multiple school systems, the commission shall

take into account the actual costs of operating such a commission charter school and any efficiencies gained by using an expanded attendance zone; and

(ii) In the case of a commission charter school that plans to offer virtual instruction, the commission may reduce the amount calculated pursuant to this paragraph based on the factors specified in subparagraph (A) of this paragraph.

(b) The department may withhold up to 3 percent of the amount determined pursuant to subsection (a) of this Code section for each commission charter school for use in administering the duties required pursuant to Code Section 20-2-2083; provided, however, that any amount withheld pursuant to this subsection shall be spent solely on expenses incurred by the commission in performing the duties required by this article.

(c) The total allotment of state and federal funds to the local school system in which a student attending a commission charter school resides shall be calculated as otherwise provided in Article 6 of this chapter with an ensuing reduction equivalent to the amount of state and federal funds appropriated to the commission charter schools pursuant to subsection (a) of this Code section.

(d) For purposes of funding students enrolled in commission charter schools in the first year of such charter school's operation and prior to the initial student count, the department shall calculate and distribute the funding for the commission charter school on the basis of its projected enrollment according to an enrollment counting procedure or projection method stipulated in the terms of the charter. After the initial student count during the first year of such commission charter school's operation and in all years of operation thereafter, each commission charter school's student enrollment shall be based on the actual enrollment in the current school year according to the most recent student count. Nothing in this Code section shall be construed to require the department to conduct more than two student counts per year. (Code 1981, § 20-2-2090, enacted by Ga. L. 2008, p. 603, § 1/HB 881; Ga. L. 2009, p. 8, § 20/SB 46.)

**Editor's notes.** — For information as to the delayed, contingent repeal of this Code section, see the editor's note at the beginning of this article.

## JUDICIAL DECISIONS

**Cited in** Gwinnett County Sch. Dist. v. Cox, 289 Ga. 265, 710 S.E.2d 773 (2011).

**20-2-2091. (For effective date, see note) Collaborative efforts; administration.**

The commission shall work in collaboration with the department on all matters related to charter authorizing and shall be assigned to the department for administrative purposes only, as prescribed in Code Section 50-4-3. For administrative purposes, including data reporting, student enrollment counting procedures, student achievement reporting, funding allocations, and related purposes as defined by the State Board of Education, commission charter schools should, consistent with department rules and regulations, be treated as contained within a single, state-wide local education agency. This local education agency shall be administered by the Department of Education, which shall ensure that commission charter schools receive the support required by this article, including, but not limited to, establishing procedures to ensure that commission charter schools receive the funding required by Code Section 20-2-2090. (Code 1981, § 20-2-2091, enacted by Ga. L. 2008, p. 603, § 1/HB 881.)

**Editor’s notes.** — For information as to the delayed, contingent repeal of this Code section, see the editor’s note at the beginning of this article.

**JUDICIAL DECISIONS**

**Cited in** Gwinnett County Sch. Dist. v. Cox, 289 Ga. 265, 710 S.E.2d 773 (2011).

**20-2-2092. (For effective date, see note) Promulgation of rules and regulations.**

The commission and the State Board of Education, as appropriate, shall adopt rules and regulations necessary to facilitate the implementation of this article. Except as otherwise provided in this article, any rules and regulations adopted by the State Board of Education pursuant to this article, to the extent practicable, shall be established in the same manner as for state chartered special schools under Article 31 of this chapter. (Code 1981, § 20-2-2092, enacted by Ga. L. 2008, p. 603, § 1/HB 881.)

**Editor’s notes.** — For information as to the delayed, contingent repeal of this Code section, see the editor’s note at the beginning of this article.

**JUDICIAL DECISIONS**

**Cited in** Gwinnett County Sch. Dist. v. Cox, 289 Ga. 265, 710 S.E.2d 773 (2011).



ARTICLE 31A

STATE CHARTER SCHOOLS

**Delayed effective date.** — This version of this article becomes effective and the Code sections formerly codified at this article are repealed effective January 1, 2013, only if a Constitutional amendment expressly authorizing the General Assembly to create state charter schools as special schools is ratified at the November

2012, general election. If such amendment is not so ratified, then this version of this article shall not become effective and shall stand repealed by operation of law on January 1, 2013, and the Code sections set out preceding this version shall remain in effect.

**20-2-2080. (For effective date, see note) Legislative findings and intent.**

(a) The General Assembly finds that:

(1) State charter schools can serve as a complement to the educational opportunities provided by local boards of education in the state’s system of public education; and

(2) State charter schools do not supplant public schools operated by local boards of education but provide options to enhance public educational opportunities.

(b) It is the intent of the General Assembly that there be established a state-level commission under the authority of the State Board of Education whose primary focus is the development and support of state charter schools in order to better meet the growing and diverse needs of students in this state and to further ensure that state charter schools of the highest academic quality are approved and supported throughout the state in an efficient manner. (Code 1981, § 20-2-2080, enacted by Ga. L. 2012, p. 1298, § 1/HB 797.)

**Editor’s notes.** — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

**20-2-2081. (For effective date, see note) Definitions.**

As used in this article, the term:

(1) “Attendance zone” means all or a portion of a local school system, one or more local school systems or portions thereof, or all local school systems in this state.

(2) “Commission” means the State Charter Schools Commission established pursuant to Code Section 20-2-2082.

(3) “Department” means the state Department of Education.

(4) “Governing board” means the governing board of the nonprofit organization which is the charter petitioner for a state charter school

and which is the same as the governing board of the state charter school which is involved in school-level governance of the state charter school.

(5) "State charter school" means a school authorized by the commission pursuant to this article whose creation is authorized as a special school pursuant to Article VIII, Section V, Paragraph VII of the Constitution. A state charter school shall be a public school.

The definitions set forth in Code Section 20-2-2062 shall be applicable to this article. (Code 1981, § 20-2-2081, enacted by Ga. L. 2012, p. 1298, § 1/HB 797.)

**Editor's notes.** — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

**20-2-2082. (For effective date, see note) State Charter Schools Commission; members; operations.**

(a) The State Charter Schools Commission is established as a state-level authorizing entity working in collaboration with the Department of Education under the authority of the State Board of Education. Start-up funds necessary to establish and operate the commission may be received by the State Board of Education in addition to such other funds as may be appropriated by the General Assembly. The department shall assist in securing federal and other institutional grant funds to establish the commission.

(b) The commission shall be appointed by the State Board of Education and shall be composed of a total of seven members and made up of three appointees recommended by the Governor, two appointees recommended by the President of the Senate, and two appointees recommended by the Speaker of the House of Representatives. The Governor, the President of the Senate, and the Speaker of the House of Representatives shall each recommend a list of no fewer than two nominees for each appointment to the commission. The appointments shall be made as soon as feasible but no later than the first regular meeting of the State Board of Education in February, 2013. Each member shall serve a term of two years; provided, however, that, for the purpose of providing staggered terms, of the initial appointments, three members shall be appointed to one-year terms and four members shall be appointed to two-year terms as determined by the State Board of Education. Thereafter, each appointee shall serve a two-year term unless the State Board of Education, after review and upon recommendation by the initial recommending authority, extends the appointment. If a vacancy occurs on the commission, it shall be filled by the State Board of Education from a recommendation by the appropriate authority according to the procedure set forth in this subsection. The members

of the commission shall annually vote to appoint a chairperson and a vice chairperson from among its membership. Each member of the commission shall hold a bachelor's degree or higher, and the commission should include a group of diverse individuals representative of Georgia's school population, to the extent possible, with respect to race, sex, and geography who have experience in finance, administration, law, and education.

(c) The commission is encouraged to convene its first meeting no later than March 1, 2013, and thereafter shall meet at least bimonthly at the call of the chairperson or upon the request of four members of the commission. Four members of the commission shall constitute a quorum.

(d) The commission shall determine the manner in which it reviews state charter school petitions and may, in its discretion, use existing department personnel to conduct such review.

(e) The members of the commission shall not be compensated for their services on the commission but may be reimbursed for per diem and travel expenses in the same manner as provided for in Code Section 45-7-21.

(f) No commission member shall solicit or accept any gift, favor, loan, contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing that commission member in the discharge of his or her duties as a commission member. (Code 1981, § 20-2-2082, enacted by Ga. L. 2012, p. 1298, § 1/HB 797.)

**Editor's notes.** — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

**20-2-2083. (For effective date, see note) Powers and duties of commission.**

(a) The commission shall have the power to:

(1) Approve or deny petitions for state charter schools and renew, nonrenew, or terminate state charter school petitions in accordance with rules and regulations established pursuant to this article. At its discretion, the commission may preliminarily approve a petition for a state charter school before the petitioner has secured space, equipment, or personnel, if the petitioner indicates such preliminary approval is necessary for it to raise working capital. The State Board of Education shall review and may overrule the approval or renewal of a state charter school by the commission within 60 days of such decision by the commission upon a majority vote of the members of the state board; and



(2) Conduct facility and curriculum reviews of state charter schools.

(b) The commission shall have the following duties:

(1) Review petitions for state charter schools and assist in the establishment of state charter schools throughout this state. The commission shall ensure that all charters for state charter schools are consistent with state education goals;

(2) Develop, promote, and disseminate best practices for state charter schools in order to ensure that high-quality schools are developed and encouraged. At a minimum, the best practices shall encourage the development and replication of academically and financially proven state charter school programs;

(3) Develop, promote, and require high standards of accountability for state charter schools. The commission shall ensure that each state charter school participates in the state's education accountability system. If a state charter school falls short of performance measures included in the approved charter, the commission shall report such shortcomings to the Department of Education;

(4) Monitor and annually review and evaluate the academic and financial performance, including revenues and expenditures, of state charter schools and hold the schools accountable for their performance pursuant to the charter and to the provisions of this article. The commission shall also review the citizenship and immigration status of each individual that works at a state charter school and aggregate the information by school on an annual basis. The commission's duties to monitor the state charter school shall not constitute the basis for a private cause of action;

(5) Direct state charter schools and persons seeking to establish state charter schools to sources of private funding and support;

(6) Actively seek, with the assistance of the department, supplemental revenue from federal grant funds, institutional grant funds, and philanthropic organizations. The commission may receive and expend gifts, grants, and donations of any kind from any public or private entity to carry out the purposes of this article;

(7) Review and recommend to the General Assembly any necessary revisions to statutory requirements regarding standards and accountability for state charter schools;

(8) Act as liaison for state charter schools in cooperating with local boards of education that may choose to allow state charter schools to utilize excess space within school facilities;

(9) Encourage collaboration with municipalities, counties, consolidated governments, universities or colleges of the board of regents,

technical institutions of the Technical College System of Georgia, and regional educational service agencies;

(10) Meet the needs of state charter schools and local school systems by uniformly administering high-quality state charter schools, thereby removing administrative burdens from the local school systems;

(11) Assist state charter schools in negotiating and contracting with local boards of education that choose to provide certain administrative or transportation services to the state charter schools on a contractual basis; and

(12) Provide for annual training, as determined by the commission, for members of state charter school governing boards. The training shall include, but not be limited to, best practices on school governance, the constitutional and statutory requirements relating to public records and meetings, and the requirements of applicable statutes and rules and regulations.

(c)(1) The commission shall establish rules and regulations requiring each state charter school to provide adequate notice of its enrollment procedures, including any provision for the use of a random selection process where all applicants have an equal chance of being admitted in the event that the number of applications to enroll in the school exceeds the capacity of the program, grade, or school.

(2) The commission shall provide adequate notice to local boards of education and to the public regarding meetings to be held by the commission. Such notice shall include the charter petitions to be discussed and acted upon. Such notice shall be provided in accordance with Chapter 14 of Title 50, relating to open and public meetings. (Code 1981, § 20-2-2083, enacted by Ga. L. 2012, p. 1298, § 1/HB 797.)

**Editor's notes.** — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

**20-2-2084. (For effective date, see note) State charter school requirements.**

(a) Petitions submitted to the commission shall be subject to rules and regulations established pursuant to this article.

(b) The commission shall be authorized to approve a petition for a state charter school that meets the following requirements:

(1) Has a state-wide attendance zone; or

(2)(A) Has a defined attendance zone; and

(B) Demonstrates that it has special characteristics, such as a special population, a special curriculum, or some other feature or features which enhance educational opportunities, which may include the demonstration of a need to enroll students across multiple communities or an alternative delivery system; provided, however, that the petitioner shall demonstrate a reasonable justification for any proposed special curriculum that has a narrow or limited focus.

(c)(1) For petitions for state charter schools with a state-wide attendance zone, the petitioner shall submit such petition to the commission and concurrently to the local board of education in which the school is proposed to be located for information purposes; provided, however, that this shall not apply to a proposed state charter school which will solely provide virtual instruction.

(2) For petitions for state charter schools with a defined attendance zone, the petitioner shall concurrently submit such petition to the commission, to the local board of education in which the school is proposed to be located, and to each local school system from which the proposed school plans to enroll students. The commission shall not act on a petition unless the local board of education in which the school is proposed to be located denies the petition; provided, however, that such local board shall approve or deny the petition no later than 60 days after its submission, as required pursuant to subsection (b) of Code Section 20-2-2064, unless the petitioner requested an extension. Failure to approve or deny such petition by such local board, in violation of Code Section 20-2-2064, shall be deemed a denial for purposes of this paragraph. A local board that has denied a petition for a state charter school shall be permitted to present to the commission in writing or in person the reasons for denial and the deficiencies in such petition resulting in such denial.

(3) The commission may take into consideration any support or opposition by the local board of education or local boards of education on the start-up charter school petition when it votes to approve or deny a corresponding state charter school petition.

(d) A state charter school shall:

(1) Seek highly qualified, properly trained teachers and other qualified personnel for such schools; provided, however, that such schools shall give preference to hiring an individual who is a citizen or national of the United States over another individual who is not a citizen or national of the United States if the two individuals are equally qualified, unless a teacher is a foreign exchange teacher; provided, however, that prior to hiring an individual other than a citizen or national of the United States or a protected individual as



defined in 8 U.S.C. Section 1324b, the school shall receive approval by the commission and demonstrate that qualified teachers and other personnel were sought but not available in such area which warrants hiring an individual other than a citizen or national of the United States or a protected individual as defined in 8 U.S.C. Section 1324b, unless a teacher is a foreign exchange teacher; provided, further, that the commission and the state charter school shall not construe this paragraph in a manner in violation of 8 U.S.C. Section 1324b or other provisions of law; and

(2) Give preference in contracting and purchasing of services and materials to businesses incorporated under the laws of this state or qualified to do business within this state and having a regularly maintained and established place of business within this state, so long as such businesses are otherwise similarly situated and qualified as compared to a business from out of state.

(e)(1) The members of the governing board for the state charter school shall meet the following qualifications:

(A) Must be a United States citizen;

(B) Must be a resident of Georgia; and

(C) Must not be an employee of the state charter school.

(2) No member of the governing board of the state charter school shall:

(A) Act in his or her official capacity in any matter where he or she, his or her immediate family member, or a business organization in which he or she has an interest has a material financial interest that would reasonably be expected to impair his or her objectivity or independence of judgment;

(B) Solicit or accept or knowingly allow his or her immediate family member or a business organization in which he or she has an interest to solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing that board member in the discharge of his or her duties as a board member;

(C) Use, or knowingly allow to be used, his or her position or any information not generally available to the members of the public which he or she receives or acquires in the course of and by reason of his or her position for the purpose of securing financial gain for himself or herself, his or her immediate family member, or any business organization with which he or she is associated; or

(D) Be an officer or serve on the board of directors of any organization that sells goods or services to that state charter school.

As used in this paragraph, the term “immediate family member” means a spouse, child, sibling, or parent or the spouse of a child, sibling, or parent.

(f) The members of the governing board of each state charter school shall participate in annual training conducted by the commission pursuant to paragraph (12) of subsection (b) of Code Section 20-2-2083.

(g) An individual that works at a state charter school or an individual that has administrative oversight at a state charter school shall not serve on the board of directors of an organization that sells goods or services to such state charter school. (Code 1981, § 20-2-2084, enacted by Ga. L. 2012, p. 1298, § 1/HB 797.)

**Editor’s notes.** — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

**20-2-2085. (For effective date, see note) Petitions by existing charter schools.**

A petition may be submitted pursuant to this Code section by an existing charter school approved by a local board of education or the State Board of Education provided that the obligations of its charter with the local board of education or State Board of Education will expire prior to entering into a new charter with the commission. Upon the existing charter school’s request, a local board of education or the State Board of Education in the case of a state chartered special school may agree to rescind or waive the obligations of a current charter to allow a petition to be submitted by an existing charter school pursuant to this Code section. An existing charter school that is established as a state charter school pursuant to this Code section shall be allowed to continue the use of all facilities, equipment, and other assets it used prior to the expiration or rescission of its charter with a local board of education; provided, however, that the local board shall be authorized to charge or continue to charge a reasonable fee for use of the facilities. (Code 1981, § 20-2-2085, enacted by Ga. L. 2012, p. 1298, § 1/HB 797.)

**Editor’s notes.** — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

**20-2-2086. (For effective date, see note) Information to parents.**

The commission shall provide maximum access to information regarding state charter schools to all parents in this state. It shall maintain information systems, including, but not limited to, a

user-friendly Internet website, that will provide information and data necessary for parents to make informed decisions. At a minimum, the commission shall provide parents with information on its accountability standards, links to state charter schools throughout this state, and public education programs concerning state charter schools. (Code 1981, § 20-2-2086, enacted by Ga. L. 2012, p. 1298, § 1/HB 797.)

**Editor's notes.** — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

**20-2-2087. (For effective date, see note) Annual report of chairperson.**

Each year, the chairperson of the commission shall appear before the State Board of Education and submit a report regarding the academic performance and fiscal responsibility of all state charter schools approved under this article. (Code 1981, § 20-2-2087, enacted by Ga. L. 2012, p. 1298, § 1/HB 797.)

**Editor's notes.** — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

**20-2-2088. (For effective date, see note) Debts of non-renewed or terminated charter schools.**

If a charter for a state charter school is not renewed or is terminated, the state charter school shall be responsible for all debts of such school. Neither the state, the State Board of Education, or the commission shall be liable for any debts of the school in the event the charter is not renewed or is terminated. The local school system may not assume the debt from any contract for services made between the governing body of the state charter school and a third party, except for a debt for which the local school system has agreed upon in writing to assume responsibility. (Code 1981, § 20-2-2088, enacted by Ga. L. 2012, p. 1298, § 1/HB 797.)

**Editor's notes.** — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

**20-2-2089. (For effective date, see note) Funding for state charter schools.**

(a)(1) The earnings for a student in a state charter school shall be equal to the earnings for any other student with similar student characteristics in a state charter school, regardless of the local school system in which the student resides or the school system in which the state charter school is located, and, except as otherwise provided in paragraph (2) of this subsection, the department shall pay to each



state charter school through appropriation of state funds an amount equal to the sum of:

(A)(i) QBE formula earnings and QBE grants earned by the state charter school based on the school's enrollment, school profile, and student characteristics. For purposes of this subparagraph, the term "QBE formula earnings" means funds earned for the Quality Basic Education Formula pursuant to Code Section 20-2-161, including the portion of such funds that are calculated in accordance with Code Section 20-2-164. QBE formula earnings shall include the salary portion of direct instructional costs, the adjustment for training and experience, the nonsalary portion of direct instructional costs, and earnings for psychologists and school social workers, school administration, facility maintenance and operation, media centers, additional days of instruction in accordance with Code Section 20-2-184.1, and staff development, as determined by the department.

(ii) A proportional share of earned state categorical grants, non-QBE state grants, transportation grants, school nutrition grants, and all other state grants, except state equalization grants, as determined by the department;

(B) The average amount of the total revenues less federal revenues less state revenues other than equalization grants per full-time equivalent for the lowest five school systems ranked by assessed valuation per weighted full-time equivalent count, as determined by the department; and

(C) The state-wide average total capital revenue per full-time equivalent, as determined by the department.

(2) In the event that a state charter school offers virtual instruction:

(A) The amount of funds received pursuant to subparagraph (B) of paragraph (1) of this subsection shall be equal to two-thirds of such calculated amount; provided, however, that this two-thirds amount may be increased by any amount up to the originally calculated amount in the discretion of the commission if relevant factors warrant such increase; and

(B) The commission may reduce the amount of funds received pursuant to subparagraph (C) of paragraph (1) of this subsection in proportion to the amount of virtual instruction provided and based on factors that affect the cost of providing instruction.

(3) For purposes of this subsection, the terms:

(A) "Assessed valuation" is defined as 40 percent of the equalized adjusted property tax digest reduced by the amount calculated pursuant to subsection (g) of Code Section 20-2-164.

(B) "Assessed valuation per weighted full-time equivalent count" is defined as the assessed valuation for the most recent year available divided by the weighted full-time equivalent count for the year of the digest.

(b) The department may withhold up to 3 percent of the amount determined pursuant to subsection (a) of this Code section for each state charter school for use in administering the duties required pursuant to Code Section 20-2-2083; provided, however, that any amount withheld pursuant to this subsection shall be spent solely on expenses incurred by the commission in performing the duties required by this article.

(c) No deduction shall be made to any state funding which a local school system is otherwise authorized to receive pursuant to this chapter as a direct result or consequence of the enrollment in a state charter school of a specific student or students who reside in the geographical area of the local school system.

(d) For purposes of funding students enrolled in a state charter school in the first year of such school's operation or for the first year that an existing state charter school offers a new grade level and prior to the initial student count, the commission shall calculate and the department shall distribute the funding for the state charter school on the basis of its projected enrollment according to an enrollment counting procedure or projection method stipulated in the terms of the charter. No later than July 1 of each year, the commission shall notify the department and the Office of Planning and Budget of the funding estimates calculated pursuant to this subsection for any new state charter schools and for any new grade levels offered by existing state charter schools. After the initial student count during the first year of such state charter school's operation or newly offered grade level and in all years of operation thereafter, each state charter school's student enrollment shall be based on the actual enrollment in the current school year according to the most recent student count. Nothing in this Code section shall be construed to require the department to conduct more than two student counts per year.

(e) Funding for state charter schools pursuant to this Code section shall be subject to appropriations by the General Assembly and such schools shall be treated consistently with all other public schools in this state, pursuant to the respective statutory funding formulas and grants. (Code 1981, § 20-2-2089, enacted by Ga. L. 2012, p. 1298, § 1/HB 797.)

**Editor's notes.** — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

**20-2-2090. (For effective date, see note) Collaborative efforts on matters related to authorization of state charter schools; administration.**

The commission shall work in collaboration with the department on all matters related to authorizing state charter schools and shall be assigned to the department for administrative purposes only, as prescribed in Code Section 50-4-3. For administrative purposes, including data reporting, student enrollment counting procedures, student achievement reporting, funding allocations, and related purposes as defined by the State Board of Education, each state charter school shall, consistent with department rules and regulations, be treated as a single local education agency. (Code 1981, § 20-2-2090, enacted by Ga. L. 2012, p. 1298, § 1/HB 797.)

**Editor's notes.** — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

**20-2-2091. (For effective date, see note) Rules and regulations for implementation of article.**

The commission and the State Board of Education, as appropriate, shall adopt rules and regulations necessary to facilitate the implementation of this article. Except as otherwise provided in this article, any rules and regulations adopted by the State Board of Education pursuant to this article, to the extent practicable, shall be established in the same manner and subject to the same requirements as for state chartered special schools under Article 31 of this chapter. (Code 1981, § 20-2-2091, enacted by Ga. L. 2012, p. 1298, § 1/HB 797.)

**Editor's notes.** — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

## ARTICLE 31B

### CHARTER SCHOOL CAPITAL FINANCE

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2008, Code Sections 20-2-3010 through 20-2-3015 of Article 31B were redesignated as Code Sections 20-2-2095 through 20-2-2095.5, respectively.

**20-2-2095. Short title.**

This article shall be known and may be cited as the “Charter School Capital Finance Act.” (Code 1981, § 20-2-2095, enacted by Ga. L. 2008, p. 619, § 1/HB 831.)



**20-2-2095.1. Definitions.**

As used in this article, the term:

(1) “Capital outlay” includes, but is not necessarily limited to, expenditures which result in the acquisition of fixed assets, existing buildings, improvements to sites, construction of buildings, construction of additions to buildings, retrofitting of existing buildings for energy conservation, and initial and additional equipment and furnishings for educational facilities.

(2) “Charter school” means a charter school:

(A) As defined in paragraph (3) of Code Section 20-2-2062; or

(B) Authorized by a state entity pursuant to other statutory authority.

(3) “Qualified charter school contributions” means the donation of funds by a taxpayer to a qualified charter school organization for the purchase of real property and for capital outlay for a charter school. Such donations shall only be deemed qualified for purposes of this article if any real property purchased for a charter school with the proceeds donated pursuant to this article or any charter school constructed or expanded with proceeds donated pursuant to this article shall have title held by the state board or, if approved by the state board, a local board of education or other state or local government entity.

(4) “Qualified charter school organization” means a charitable organization in this state that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code which is approved by the state board to provide funds for the purchase of real property for capital outlay for charter schools in this state.

(5) “State board” means the State Board of Education. (Code 1981, § 20-2-2095.1, enacted by Ga. L. 2008, p. 619, § 1/HB 831.)

**20-2-2095.2. Grant program for qualified charter school contributions.**

Subject to appropriations by the General Assembly, the state board shall establish a grant program for qualified charter school contributions. The grant program shall provide one dollar in matching funds up to a maximum amount authorized by the state board for a single charter school project for each dollar donated to a qualified charter school organization for such project; provided, however, that the total amount to a qualified charter school organization for a single charter school project shall not exceed 75 percent of the average per student

state portion of capital outlay funding provided pursuant to Code Section 20-2-260 multiplied by the number of students that the charter school project was designed to serve. (Code 1981, § 20-2-2095.2, enacted by Ga. L. 2008, p. 619, § 1/HB 831.)

### **20-2-2095.3. Date certain for matching funds.**

If appropriations are made by the General Assembly specifically for this program, the state board shall establish a date certain on which all matching funds shall be committed by a qualified charter school organization in order to be eligible for the state portion provided pursuant to this article. (Code 1981, § 20-2-2095.3, enacted by Ga. L. 2008, p. 619, § 1/HB 831.)

### **20-2-2095.4. Adoption of guidelines and standards for construction of charter schools; reporting.**

The state board shall adopt policies, guidelines, and standards regarding the construction of charter schools that are constructed in part with contributions made to qualified charter school organizations which, to the extent applicable, shall be consistent with state board policies, guidelines, and standards governing construction of other public schools. The state board shall compile an annual report to the Governor forecasting the amount of requests for matching funds made pursuant to this article. Such report shall be made available to any member of the General Assembly upon request. (Code 1981, § 20-2-2095.4, enacted by Ga. L. 2008, p. 619, § 1/HB 831.)

### **20-2-2095.5. Promulgation of rules and regulations.**

The state board shall be authorized to promulgate any rules and regulations necessary to implement and administer the provisions of this article. (Code 1981, § 20-2-2095.5, enacted by Ga. L. 2008, p. 619, § 1/HB 831.)

## **ARTICLE 32**

### **HIGH SCHOOL ATHLETICS OVERVIEW COMMITTEE**

**Editor's notes.** — Code Section 878, § 1/HB 1316, provided for the repeal 20-2-2105, as enacted by Ga. L. 2006, p. 878, § 1/HB 1316, effective December 31, 2010.

### **20-2-2100 through 20-2-2105.**

Repealed by Ga. L. 2006, p. 878, § 1/HB 1316, effective December 31, 2010.

**Editor’s notes.** — This article consisted of Code Sections 20-2-2100 through 20-2-2105 relating to the High School Athletics Overview Committee and was based

on Code 1981, §§ 20-2-2100 through 20-2-2105, enacted by Ga. L. 2006, p. 878, § 1/HB 1316.

ARTICLE 33

SCHOLARSHIP PROGRAM FOR SPECIAL NEEDS STUDENTS

**Editor’s notes.** — Ga. L. 2007, p. 197, § 2/SB 10, not codified by the General Assembly, provides that this Act shall apply to the 2007-2008 school year and all school years subsequent thereto.

**Law reviews.** — For note on 2007 enactment of this article, see 24 Ga. St. U. L. Rev. 95 (2007).

20-2-2110. Short title.

This article shall be known and may be cited as the “Georgia Special Needs Scholarship Act.” (Code 1981, § 20-2-2110, enacted by Ga. L. 2007, p. 197, § 1/SB 10.)

20-2-2111. Legislative findings; purpose.

The General Assembly finds that:

- (1) Students with disabilities have special needs that merit educational alternatives which will allow students to learn in an appropriate setting and manner;
- (2) Parents are best equipped to make decisions for their children, including the educational setting that will best serve the interests and educational needs of their children;
- (3) Children, parents, and families are the primary beneficiaries of the scholarship program authorized in this article and any benefit to private schools, sectarian or otherwise, is purely incidental;
- (4) The scholarship program established in this article is for the valid secular purpose of tailoring a student’s education to that student’s specific needs and enabling families to make genuine and independent private choices to direct their resources to appropriate schools; and
- (5) Nothing in this article shall be construed as a basis for granting vouchers or tuition tax credits for any other students, with or without disabilities. (Code 1981, § 20-2-2111, enacted by Ga. L. 2007, p. 197, § 1/SB 10.)

20-2-2112. Definitions.

As used in this article, the term:

- (1) “Board” means the State Board of Education.



- (2) "Department" means the Department of Education.
- (3) "Parent" means a biological parent, legal guardian, custodian, or other person with legal authority to act on behalf of a child.
- (4) "Participating school" means a private school that has notified the department of its intention to participate in the program, and that complies with the department's requirements.
- (5) "Prior school year in attendance" means that the student was enrolled and reported by a public school system or school systems for funding purposes during the preceding October and March full-time equivalent (FTE) program counts in accordance with Code Section 20-2-160.
- (6) "Private school" means a nonpublic school, sectarian or nonsectarian, which is accredited or in the process of becoming accredited by one or more of the entities listed in subparagraph (A) of paragraph (6) of Code Section 20-3-519.
- (7) "Program" means the scholarship program established pursuant to this article.
- (8) "Resident school system" means the public school system in which the student would be enrolled based on his or her residence.
- (9) "Scholarship" means a Georgia Special Needs Scholarship awarded pursuant to this article.
- (10) "Scholarship student" means a student who receives a scholarship pursuant to this article. (Code 1981, § 20-2-2112, enacted by Ga. L. 2007, p. 197, § 1/SB 10.)

**20-2-2113. Annual notification of options available to parents of special needs students.**

- (a) The resident school system shall annually notify prior to the beginning of each school year the parent of a student with a disability by letter, electronic means, or by such other reasonable means in a timely manner of the options available to the parent under this article.
- (b)(1) The parent may choose for the student to attend another public school within the resident school system which has available space and which has a program with the services agreed to in the student's existing individualized education program. If the parent chooses this option, then the parent shall be responsible for transportation to such school. The student may attend such public school pursuant to this paragraph until the student completes all grades of the school, graduates, or reaches the age of 21, whichever occurs first, in accordance with federal and state requirements for disabled students;

(2) The parent may choose to enroll the student in and transport the student to a public school outside of the student's resident school system which has available space and which has a program with the services agreed to in the student's existing individualized education program. The public school system may accept the student, and if it does, such system shall report the student for purposes of funding to the department;

(3) The parent may choose for the student to attend one of the state schools for the deaf and blind operated by the State Board of Education, if appropriate for the student's needs. Funding for such students shall be provided in accordance with Code Section 20-2-302; or

(4) The parent may request and receive from the department a scholarship for the student to enroll in and attend a participating private school in accordance with this article. (Code 1981, § 20-2-2113, enacted by Ga. L. 2007, p. 197, § 1/SB 10.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2007, the first paragraph was designated as subsection (a), and paragraphs (1) through (4) were redesignated as paragraphs (b)(1) through (b)(4), respectively.

**20-2-2114. Qualifications for scholarship; financial responsibility; state-wide assessments; exception; compliance.**

(a) A student shall qualify for a scholarship under this article if:

(1) The student's parent currently resides within Georgia and has been a Georgia resident for at least one year;

(2) The student has one or more of the following disabilities:

- (A) Autism;
- (B) Deaf/blind;
- (C) Deaf/hard of hearing;
- (D) Emotional and behavioral disorder;
- (E) Intellectual disability;
- (F) Orthopedic impairment;
- (G) Other health impairment;
- (H) Specific learning disability;
- (I) Speech-language impairment;
- (J) Traumatic brain injury; or
- (K) Visual impairment;

(3) The student has spent the prior school year in attendance at a Georgia public school and shall have had an Individualized Education Program (IEP) written by the school in accordance with federal and state laws and regulations;

(4) The parent obtains acceptance for admission of the student to a participating school; and

(5) The parent submits an application for a scholarship to the department no later than the deadline established by the department.

(b) Upon acceptance of the scholarship, the parent assumes full financial responsibility for the education of the scholarship student, including transportation to and from the participating school.

(c) For a student who participates in the program whose parents request that the student take the state-wide assessments pursuant to Code Section 20-2-281, the resident school system shall make available to the student locations and times to take all state-wide assessments. Test scores of private school students participating in the state-wide assessments shall not be applied to the system averages of the resident school system for data reported for federal and state requirements.

(d) Students enrolled in a school operated by the Department of Juvenile Justice are not eligible for the scholarship.

(e) The scholarship shall remain in force until the student returns to his or her assigned school in the resident public school system, graduates from high school, or reaches the age of 21, whichever occurs first. However, at any time, the student's parent may remove the student from the participating school and place the student in another participating school or public school as provided for in Code Section 20-2-2113.

(f) Acceptance of a scholarship shall have the same effect as a parental refusal to consent to services pursuant to the Individuals with Disabilities Education Act, 20 U.S.C.A. Section 1400, et seq.

(g) The creation of the program or the granting of a scholarship pursuant to this article shall not be construed to imply that a public school did not provide a free and appropriate public education for a student or constitute a waiver or admission by the state.

(h) Any scholarship directed to a participating school is so directed wholly as a result of the genuine and independent private choice of the parent.

(i) The parent of each student participating in the scholarship program shall comply fully with the participating school's rules and policies.



(j) Any parent who fails to comply with the provisions of this article and department regulations relating to the scholarship shall forfeit the scholarship. (Code 1981, § 20-2-2114, enacted by Ga. L. 2007, p. 197, § 1/SB 10.)

**20-2-2115. Eligibility requirements for schools participating in scholarship program; application of participating school.**

(a) To be eligible to enroll a scholarship student, a participating school shall:

(1) Have a physical location in Georgia where the scholarship students attend classes and have direct contact with the school's teachers;

(2) Demonstrate fiscal soundness by having been in operation for one school year or by submitting a financial information report for the school that complies with uniform financial accounting standards established by the department and conducted by a certified public accountant. The report must confirm that the school desiring to participate is insured and the owner or owners have sufficient capital or credit to operate the school for the upcoming school year serving the number of students anticipated with expected revenues from tuition and other sources that may be reasonably expected. The report shall be limited in scope to those records that are necessary for the department to make a determination on fiscal soundness and to make payments to schools for scholarships;

(3) Comply with the antidiscrimination provisions of 42 U.S.C. Section 2000d;

(4) Comply with all health and safety laws or codes that apply to private schools;

(5) Comply with all provisions of Code Section 20-2-690 and any other state law applicable to private schools;

(6) Regularly report to the parent and the department on the student's academic progress, including the results of pre-academic assessments and post-academic assessments given to the student, in accordance with department guidelines; and

(7) Employ or contract with teachers who hold a bachelor's degree or higher degree or have at least three years of experience in education or health and annually provide to the parents the relevant credentials of the teachers who will be teaching their students.

(b) A home school operating under the provisions of Code Section 20-2-690 shall not be eligible to enroll scholarship students.

(c) Residential treatment facilities licensed or approved by the state shall not be eligible to enroll scholarship students.

(d) The creation of the program shall not be construed to expand the regulatory authority of the state, its officers, or any public school system to impose any additional regulation of nonpublic schools beyond those reasonably necessary to enforce the requirements of this article.

(e) A participating school intending to enroll scholarship students shall submit an application to the department by June 30 of the school year preceding the school year in which it intends to enroll scholarship students. The notice shall specify the grade levels and services that the school has available for students with disabilities who are participating in the scholarship program. A school intending to enroll scholarship students in the 2007-2008 school year shall submit an application no later than June 30, 2007.

(f) The board shall approve a participating school's application to enroll scholarship students if the school meets the eligibility requirements of this article and complies with board rules established pursuant to Code Section 20-2-2117. The board shall make available to local school systems and the public a list of participating schools. (Code 1981, § 20-2-2115, enacted by Ga. L. 2007, p. 197, § 1/SB 10.)

#### **20-2-2116. Amount of scholarship; method of payments.**

(a) The maximum scholarship granted a scholarship student pursuant to this article shall be an amount equivalent to the costs of the educational program that would have been provided for the student in the resident school system as calculated under Code Section 20-2-161. This shall not include any federal funds.

(b) The amount of the scholarship shall be the lesser of the amount calculated in subsection (a) of this Code section or the amount of the participating school's tuition and fees, if applicable. The amount of any assessment fee required by the participating school may be paid from the total amount of the scholarship.

(c) Scholarship students shall be counted in the enrollment of their resident school system; provided, however, that this count shall only be for purposes of determining the amount of the scholarship and the scholarship students shall not be included as enrolled for purposes of state or federal accountability requirements, including, but not limited to, the federal Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001 (P.L. 107-110). The funds needed to provide a scholarship shall be subtracted from the allotment payable to the resident school system.

(d) Each local school system shall submit quarterly reports to the department on dates established by the department stating the number

of scholarship students in the resident school system. Following each notification, the department shall transfer from the state allotment to each school system the amount calculated under Code Section 20-2-161 to a separate account for the scholarship program for quarterly disbursement to the parents of scholarship students. When a student enters the program, the department must receive all documentation required for the student's participation, including the participating school's and student's fee schedules at least 30 days before the first quarterly scholarship payment is made for the student. The department may not make any retroactive payments.

(e) Upon proper documentation received by the department, the department shall make quarterly scholarship payments to the parents of scholarship students on dates established by the department during each academic year in which the scholarship is in force. The initial payment shall be made upon evidence of admission to the participating school, and subsequent payments shall be made on evidence of continued enrollment and attendance at the participating school.

(f) Payment to the parents must be made by individual warrant made payable to the student's parent and mailed by the department to the participating school of the parent's choice, and the parent shall restrictively endorse the warrant to the participating school for deposit into the account of such school.

(g) A person, on behalf of a participating school, may not accept a power of attorney from a parent to sign a warrant, and a parent of a scholarship student may not give a power of attorney designating a person, on behalf of a participating school, as the parent's attorney in fact.

(h) If the participating school requires partial payment of tuition prior to the start of the academic year to reserve space for students admitted to the school, that partial payment may be paid by the department prior to the first quarterly payment of the year in which the scholarship is awarded, up to a maximum of \$1,000.00, and deducted from subsequent scholarship payments. If a student decides not to attend the participating school, the partial reservation payment must be returned to the department by such school. Only one reservation payment per student may be made per year. (Code 1981, § 20-2-2116, enacted by Ga. L. 2007, p. 197, § 1/SB 10.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2007, "of this Code section" was inserted in the first sentence of subsection (b).



**20-2-2117. Adoption and promulgation of rules; immunity from liability for scholarship decisions; schools may be barred from program participation for certain actions.**

(a) The board shall adopt rules to administer the program regarding eligibility and participation of participating schools, including, but not limited to, timelines that will maximize student and public and private school participation, the calculation and distribution of scholarships to eligible students and participating schools, and the application and approval procedures for eligible students and participating schools. The department shall develop and utilize a compliance form for completion by participating schools. The department shall be authorized to require any pertinent information as it deems necessary from participating schools for the purpose of implementing the program. Participating schools shall be required to complete such forms and certify their accuracy.

(b) No liability shall arise on the part of the department or the state or of any local board of education based on the award or use of a scholarship awarded pursuant to this article.

(c) The department may bar a school from participation in the program if the department determines that the school has intentionally and substantially misrepresented information or failed to refund to the state any scholarship overpayments in a timely manner. (Code 1981, § 20-2-2117, enacted by Ga. L. 2007, p. 197, § 1/SB 10; Ga. L. 2008, p. 324, § 20/SB 455.)

**20-2-2118. Annual report.**

The Office of Student Achievement, in conjunction with the department, shall provide the General Assembly not later than December 1 of each year with a report regarding the scholarship program for the previous fiscal year. The report shall include, but not be limited to, numbers and demographics of students participating and numbers of participating schools. Such report shall also be posted on the Office of Student Achievement's website. (Code 1981, § 20-2-2118, enacted by Ga. L. 2007, p. 197, § 1/SB 10.)

**ARTICLE 34**

**INTRADISTRICT TRANSFERS**

**20-2-2130. Definitions.**

As used in this article, the term:

- (1) "Department" means the Department of Education.

(2) "Parent" means a biological parent, legal guardian, custodian, or other person with legal authority to act on behalf of a child. (Code 1981, § 20-2-2130, enacted by Ga. L. 2009, p. 782, § 1/HB 251.)

**20-2-2131. Enrollment of students in school to which not originally assigned; procedure; annual notification; exception.**

(a)(1) Beginning in school year 2009-2010, the parent of a student enrolled in a public elementary or secondary school in this state may elect to enroll such student in a public school that is located within the school system in which the student resides other than the one to which the student has been assigned by the local board of education if such school has classroom space available after its assigned students have been enrolled. The parent shall assume the responsibility and cost of transportation of the student to and from the school.

(2) No later than July 1, 2009, each local school system shall establish a universal, streamlined process available to all students to implement the transfer requirements of paragraph (1) of this subsection.

(3) A student who transfers to another school pursuant to this subsection may, at his or her election, continue to attend such school until the student completes all grades of the school.

(4) This subsection shall not be construed to affect any student currently attending a school other than the school to which the student has been assigned by the local board of education pursuant to a transfer authorized under the federal No Child Left Behind Act (P.L. 107-110).

(b) The department shall establish a model universal, streamlined process to implement the transfer provisions of this Code section. Each local board of education shall adopt a universal, streamlined transfer process that includes, at a minimum, such state model. Such local process shall include a deadline for submitting transfer requests.

(c) Each local school system shall annually notify prior to each school year the parents of each student by letter, electronic means, or by such other reasonable means in a timely manner of the options available to the parent under this article.

(d) The local school system shall notify parents by July 1 of each year which schools have available space and to which of these schools parents may choose to request a transfer for their children.

(e) This Code section shall not apply to charter schools.

(f) This Code section shall not apply to newly opened schools with available classroom space for a period of four years after the school

opens. (Code 1981, § 20-2-2131, enacted by Ga. L. 2009, p. 782, § 1/HB 251.)

**U.S. Code.** — The federal No Child Left Behind Act, referred to in this Code section, is codified at 20 U.S.C. § 6301 et seq.

## ARTICLE 35

### EDUCATION OF MILITARY DEPENDENTS

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2009, this article, which was enacted as Article 34, containing Code Sections 20-2-2130 through 20-2-2170, was redesignated as Article 35, containing Code Sections 20-2-2140 through 20-2-2180.

#### 20-2-2140 through 20-2-2180.

Repealed by Ga. L. 2012, p. 377, § 2/SB 227, effective July 1, 2012.

**Editor's notes.** — This article consisted of Code Sections 20-2-2140 through 20-2-2141 (Part 1), 20-2-2150 through 20-2-2151 (Part 2), 20-2-2160 through 20-2-2164 (Part 3), 20-2-2170 through 20-2-2171 (Part 4), 20-2-2180 (Part 5), relating to education of military dependents, and was based on Ga. L. 2009, p. 853, § 1/SB 114.

Ga. L. 2012, p. 377, § 1/SB 227 provides that the repeal of this article becomes effective only upon legislative enactment of this compact into law by no less than ten of the states. As of July 1, 2012, 42 states have enacted this compact into law.



## CHAPTER 2A

## STUDENT SCHOLARSHIP ORGANIZATIONS

| Sec.     |   | Sec.     |   |
|----------|---|----------|---|
| 20-2A-1. | Definitions.  | 20-2A-5. | Parent or guardian endorsement of award required.                         |
| 20-2A-2. | Requirements for student scholarship organizations.                               | 20-2A-6. | List of student scholarship organizations to be maintained on website.    |
| 20-2A-3. | Taxation reporting requirements for student scholarship organizations.            | 20-2A-7. | Penalties for failure to comply with requirements of chapter; violations. |
| 20-2A-4. | List of student scholarship organizations to be provided to the General Assembly. |          |   |

**Editor's notes.** — Ga. L. 2008, p. 1108, § 3/HB 1133, not codified by the General Assembly, provides that this Act shall be

applicable to all taxable years beginning on or after January 1, 2008.

**20-2A-1. Definitions.**

As used in this chapter, the term:

(1) "Eligible student" means a student who is a Georgia resident enrolled in a Georgia secondary or primary public school or eligible to enroll in a qualified first grade, kindergarten program, or pre-kindergarten program; provided, however, that if a student is deemed an eligible student pursuant to this paragraph, he or she shall continue to qualify as such until he or she graduates, reaches the age of 20, or returns to a public school, whichever occurs first.

(2) "Qualified school or program" means a nonpublic pre-kindergarten program, primary school, or secondary school that:

(A) Is accredited or in the process of becoming accredited by one or more entities listed in subparagraph (A) of paragraph (6) of Code Section 20-3-519; and

(B) Is located in this state, adheres to the provisions of the federal Civil Rights Act of 1964, and satisfies the requirements prescribed by law for private schools in this state.

(3) "Student scholarship organization" means a charitable organization in this state that:

(A) Is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code and obligates for scholarships or tuition grants at least 90 percent of its annual revenue received from donations for scholarships or tuition grants to allow students to attend any qualified school of their parents' choice; and

(B) Provides educational scholarships or tuition grants to eligible students without limiting availability to only students of one school. (Code 1981, § 20-2A-1, enacted by Ga. L. 2008, p. 1108, § 1/HB 1133; Ga. L. 2011, p. 529, § 1/HB 325.)

**The 2011 amendment**, effective July 1, 2011, in paragraph (1), inserted “first grade,” added a comma following “kindergarten program”, and added the proviso; in paragraph (2), inserted “pre-kindergarten program,” and inserted a comma following “primary school”; in subparagraph (3)(A), substituted “obligates for scholarships or tuition grants at least” for “allocates”, and inserted “received from donations”. See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2011, p. 529,

§ 3/HB 325, not codified by the General Assembly, provides that the 2011 amendment shall be applicable to all taxable years beginning on or after January 1, 2011.

**U.S. Code.** — The Civil Rights Act of 1964, referred to in subparagraph (2)(B), is codified at 42 U.S.C. § 2000a et seq.

Section 501(c)(3) of the Internal Revenue Code, referred to in subparagraph (3)(A), is codified at 26 U.S.C. § 501(c)(3).

## 20-2A-2. Requirements for student scholarship organizations.

Each student scholarship organization:

(1) Must obligate for scholarships or tuition grants at least 90 percent of its annual revenue received from donations for scholarships or tuition grants; however, up to 25 percent of this amount may be carried forward for the next fiscal year. The maximum scholarship amount given by the student scholarship organization in any given year shall not exceed the average state and local expenditures per student in fall enrollment in public elementary and secondary education for this state. The Department of Education shall determine and publish such amount annually, no later than January 1;

(2) Must maintain separate accounts for scholarship funds and operating funds;

(3) Must have an independent board of directors with at least three members;

(4) May transfer funds to another student scholarship organization;

(5) Must conduct an audit of its accounts by an independent certified public accountant within 120 days after the completion of the student scholarship organization’s fiscal year verifying that it obligated for scholarships or tuition grants at least 90 percent of its annual revenue received from donations for scholarships or tuition grants and provide such audit to the Department of Revenue in accordance with Code Section 20-2A-3; and

(6) Must annually submit notice to the Department of Education in accordance with department guidelines of its participation as a

student scholarship organization under this chapter. (Code 1981, § 20-2A-2, enacted by Ga. L. 2008, p. 1108, § 1/HB 1133; Ga. L. 2011, p. 529, § 1/HB 325.)

**The 2011 amendment**, effective July 1, 2011, in paragraph (1), inserted “for scholarships or tuition grants at least”, inserted “received from donations”, and added the second and third sentences; added paragraph (3); redesignated former paragraphs (3) and (4) as present paragraphs (4) and (5), respectively; and, in paragraph (5), inserted “verifying that it obligated for scholarships or tuition grants at least 90 percent of its annual

revenue received from donations for scholarships or tuition grants”; and redesignated former paragraph (5) as present paragraph (6). See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2011, p. 529, § 3/HB 325, not codified by the General Assembly, provides that the 2011 amendment shall be applicable to all taxable years beginning on or after January 1, 2011.

### **20-2A-3. Taxation reporting requirements for student scholarship organizations.**

(a) Each student scholarship organization must report to the Department of Revenue, on a form provided by the Department of Revenue, by January 12 of each tax year the following:

(1) The total number and dollar value of individual contributions and tax credits approved. Individual contributions shall include contributions made by those filing income tax returns as a single individual or head of household and those filing joint returns;

(2) The total number and dollar value of corporate contributions and tax credits approved;

(3) The total number and dollar value of scholarships awarded to eligible students; and

(4) A list of donors, including the dollar value of each donation and the dollar value of each approved tax credit.

Such report shall also include a copy of the audit conducted pursuant to paragraph (5) of Code Section 20-2A-2. The Department of Revenue shall post on its website the information received by each student scholarship organization pursuant to paragraphs (1) through (4) of this subsection.

(b) The Department of Revenue shall not require any other information from student scholarship organizations, except as expressly authorized in this chapter. All information or reports provided by student scholarship organizations to the Department of Revenue shall be confidential taxpayer information, governed by Code Sections 48-2-15, 48-7-60, and 48-7-61, whether it relates to the donor or the student scholarship organization. (Code 1981, § 20-2A-3, enacted by Ga. L. 2008, p. 1108, § 1/HB 1133; Ga. L. 2011, p. 529, § 1/HB 325.)



**The 2011 amendment**, effective July 1, 2011, in paragraph (a)(1), inserted “individual” in the first sentence, added the second sentence, and deleted “and” at the end; added paragraphs (a)(2) and (a)(3); redesignated former paragraph (a)(2) as present paragraph (a)(4); in the concluding language at the end of subsection (a), substituted “paragraph (5)” for “para-

graph (4)” and added the second sentence; and added the second sentence in subsection (b). See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2011, p. 529, § 3/HB 325, not codified by the General Assembly, provides that the 2011 amendment shall be applicable to all taxable years beginning on or after January 1, 2011.

#### **20-2A-4. List of student scholarship organizations to be provided to the General Assembly.**

The Department of Revenue shall provide a list of all student scholarship organizations receiving contributions from businesses and individuals granted a tax credit under Code Section 48-7-29.16 to the General Assembly by January 30 of each year. (Code 1981, § 20-2A-4, enacted by Ga. L. 2008, p. 1108, § 1/HB 1133; Ga. L. 2011, p. 529, § 1/HB 325.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2009, “Code Section 48-7-29.16” was substituted for “Code Section 48-7-29.13” in this Code section.

**Editor’s notes.** — Ga. L. 2011, p. 529, § 1/HB 325, effective July 1, 2011, reenacted this Code section without change.

Ga. L. 2011, p. 529, § 3/HB 325, not codified by the General Assembly, provides that the 2011 amendment shall be applicable to all taxable years beginning on or after January 1, 2011.

#### **20-2A-5. Parent or guardian endorsement of award required.**

The parent or guardian to whom a scholarship award is granted must restrictively endorse the scholarship award to the private school for deposit into the account of the private school. The parent or guardian may not designate any entity or individual associated with the participating private school as the parent’s attorney in fact to endorse a scholarship award. A participant who fails to comply with this Code section forfeits the scholarship. (Code 1981, § 20-2A-5, enacted by Ga. L. 2008, p. 1108, § 1/HB 1133; Ga. L. 2011, p. 529, § 1/HB 325.)

**The 2011 amendment**, effective July 1, 2011, substituted “scholarship award” for “scholarship warrant” at the end of the second sentence. See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2011, p. 529,

§ 3/HB 325, not codified by the General Assembly, provides that the 2011 amendment shall be applicable to all taxable years beginning on or after January 1, 2011.

**20-2A-6. List of student scholarship organizations to be maintained on website.**

The Department of Education shall maintain on its website a current list of all student scholarship organizations which have provided notice pursuant to paragraph (6) of Code Section 20-2A-2. (Code 1981, § 20-2A-6, enacted by Ga. L. 2008, p. 1108, § 1/HB 1133; Ga. L. 2011, p. 529, § 1/HB 325.)

**The 2011 amendment**, effective July 1, 2011, substituted “paragraph (6)” for “paragraph (5)” in this Code section. See editor’s note for applicability.

§ 3/HB 325, not codified by the General Assembly, provides that the 2011 amendment shall be applicable to all taxable years beginning on or after January 1, 2011.

**Editor’s notes.** — Ga. L. 2011, p. 529,

**20-2A-7. Penalties for failure to comply with requirements of chapter; violations.**

(a)(1) Any student scholarship organization that fails to comply with any requirements under this chapter shall be given written notice by the Department of Revenue of such failure to comply by certified mail and shall have 90 days from the receipt of such notice to correct all deficiencies.

(2) Upon failure to correct all deficiencies within 90 days, such student scholarship organization shall:

(A) Be immediately removed from the Department of Education list provided for in Code Section 20-2A-6;

(B) Be required to cease all operations as a student scholarship organization and transfer all scholarship account funds to a properly operating student scholarship organization within 30 calendar days of receipt of notice from the Department of Revenue of removal from the approved list; and

(C) Have all applications for preapproval of tax credits under Code Section 48-7-29.16 rejected by the Department of Revenue on or after the date the Department of Education removes the student scholarship organization from its list provided for in Code Section 20-2A-6.

(b) Any student scholarship organization that:

(1) Awards or restricts the award of a scholarship to a specific eligible student at the request of a donor; or

(2) Encourages or facilitates taxpayers to engage in actions that are prohibited by law shall be subject to paragraph (2) of subsection (a) of this Code section.

(c) Any officer or director of a student scholarship organization found to have actively participated in a student scholarship organization's intentional violation of its obligations under this chapter shall be guilty of a misdemeanor. (Code 1981, § 20-2A-7, enacted by Ga. L. 2011, p. 529, § 1/HB 325.)

**Effective date.** — This Code section became effective July 1, 2011. See editor's note for applicability.

**Editor's notes.** — Ga. L. 2011, p. 529, § 3/HB 325, not codified by the General

Assembly, provides that the 2011 enactment shall be applicable to all taxable years beginning on or after January 1, 2011.



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- 20-3-475. Legislative intent.  
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- 20-3-480. Definitions.  
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**MILITARY SCHOLARSHIPS**

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**PART 5**

**BOARD OF REGENTS SCHOLARSHIPS**

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20-3-519.7 through 20-3-519.9 [Repealed].  
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**PART 1**

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terms and conditions; applications; eligibility; duties of the Division of Family and Children Services; expenses and fees covered; report by the Education Coordinating Council.

### Article 12

#### Postsecondary Education Grants for Foster Children and Adopted Children

- 20-3-660. Program of grants created;

**Cross references.** — Approval of medical and osteopathic colleges by Georgia Composite Medical Board, § 43-34-36. Issuance of veterinary faculty licenses by State Board of Veterinary Medicine, § 43-50-30. Duty of Department of Audits and Accounts to audit books and accounts of units of University System of Georgia, § 50-6-6.

**Administrative rules and regulations.** — School eligibility standards for

participation in the assured access lending program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Student Finance Commission, Chapter 268-11-2.

**Law reviews.** — For comment, "Closing the Campus Gates to Free Expression: The Regulation of Offensive Speech at Colleges and Universities," see 39 Emory L.J. 1351 (1990).

### RESEARCH REFERENCES

**ALR.** — Physical or mental illness as basis of dismissal of student from school, college, or university, 17 ALR4th 519.

Absence from or inability to attend school or college as affecting liability for or right to recover payments for tuition or board, 20 ALR4th 303.

Validity of college or university regulation of political or voter registration activ-

ity in student housing facilities, 39 ALR4th 1137.

College's power to revoke degree, 57 ALR4th 1243.

Tort liability of college or university for injury suffered by student as a result of own or fellow student's intoxication, 62 ALR4th 81.

### ARTICLE 1

#### DEFINITIONS

#### 20-3-1. Definitions.

As used in this chapter, the term:

(1) "Board of regents" or "board" means the Board of Regents of the University System of Georgia.



(2) "University system" or "system" means the University System of Georgia.

## ARTICLE 2

### BOARD OF REGENTS AND UNIVERSITY SYSTEM

**Cross references.** — Board of regents generally, Ga. Const. 1983, Art. VIII, Sec. IV, Para. I.

**Law reviews.** — For article, "The Legal History of the University of Georgia," see 1 Ga. L. Rev. No. 3, p. 3 (1927).

For note discussing the constitutional implications of higher nonresident tuition fees charged by state universities, see 8 Ga. St. B.J. 86 (1971).

### OPINIONS OF THE ATTORNEY GENERAL

**Participation by legislative officers in regional education board's functions constitutional.** — Since the functions of the Southern Regional Education Board are now in fact essentially information gathering and advisory, performed with a view toward assisting the several states in their separate educational planning services, participation by legislative officers in those functions does not involve any constitutional violation. 1975 Op. Att'y Gen. No. 75-142.

**Board of regents may construct**

**buildings without advertising for bids** when no federal funds are involved. 1945-47 Op. Att'y Gen. p. 227.

**If the board advertises for bids, the board should not prevent any contractor from bidding,** although the board may reserve the right to reject bids from persons not qualified to do the work. 1945-47 Op. Att'y Gen. p. 227.

**Board has authority to collect traffic fines in regulation of the board's institutions and students therein.** 1970 Op. Att'y Gen. No. 70-69.

### RESEARCH REFERENCES

**ALR.** — Incorporated educational body as an institution belonging to the state, 65 ALR 1394.

## PART 1

### BOARD OF REGENTS

#### 20-3-20. Creation; change of name of "Trustees of the University of Georgia."

(a) The board of regents is created.

(b) The name of the corporation established prior to January 1, 1932, and existing under the name and style, "Trustees of the University of Georgia," is changed to "Regents of the University System of Georgia." (Ga. L. 1931, p. 7, § 45; Code 1933, § 32-101; Ga. L. 1943, p. 670, §§ 1, 2; Ga. L. 1972, p. 1015, §§ 2201, 2202.)

**Law reviews.** — For note analyzing sovereign immunity in this state and proposing implementation of a waiver

scheme and creation of a court of claims, see 27 Emory L.J. 717 (1978).

### JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1364, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Waiver of immunity.** — Although the Regents of the University System of Georgia is a corporate body, established by former Code 1933, § 32-101, neither that act nor any following it have granted the corporation any power to sue or be sued. Regents of the University System of Georgia are therefore immune from suit under former Code 1933, § 32-101.1 because the powers and duties of the corporation have not been raised to constitutional status. *McCafferty v. Medical College*, 249 Ga. 62, 287 S.E.2d 171 (1982).

Power of the board of regents of the university system to sue and be sued waives Eleventh Amendment immunity in both state and federal courts. *McCroan v. Bailey*, 543 F. Supp. 1201 (S.D. Ga. 1982).

**Immunity of regents from suit.** — Although the regents is a corporate body, established by O.C.G.A. § 20-3-20, neither the statute nor any other provision following the statute have granted the corporation any power to sue or be sued. The board of regents is therefore immune from suit under O.C.G.A. § 20-3-36, since there is no constitutional provision to the contrary. *McCafferty v. Medical College*, 249 Ga. 62, 287 S.E.2d 171 (1982).

**Regents of the University System of Georgia is a distinct corporate entity**, though controlled by a board of regents. *State v. Regents of Univ. Sys.*, 179 Ga. 210, 175 S.E. 567 (1934); *American Sur. Co. v. Griffin Banking Co.*, 50 Ga. App. 460, 178 S.E. 481 (1935).

**Regents and board of regents are not two separate entities.** There is but one entity in which are vested the government, control, and management of the University System of Georgia. *Azizi v. Board of Regents*, 132 Ga. App. 384, 208

S.E.2d 153 (1974), cert. dismissed, 233 Ga. 487, 212 S.E.2d 627 (1975).

**University corporation is not the state, or a state agency**, but is a creature of the state, and a debt of the creature does not stand upon a level with the creator and never can rise thereto, and the "regents of the University System of Georgia" is a corporation; thus, the state may be likened to a stockholder of which the regents are the directors. *American Sur. Co. v. Griffin Banking Co.*, 50 Ga. App. 460, 178 S.E. 481 (1935).

**Regents of University System of Georgia is not mere private corporation**, but instrument of state for performing one of the functions of the government of the State of Georgia, to wit: that of the education of the state's people. *State v. Davison*, 198 Ga. 27, 31 S.E.2d 225 (1944).

**Regents of the University System of Georgia is a governmental agency** of the state in charge of property of which the title is in the state. *Azizi v. Board of Regents*, 132 Ga. App. 384, 208 S.E.2d 153 (1974), cert. dismissed, 233 Ga. 487, 212 S.E.2d 627 (1975).

**Property granted by state for learning vested in trustees.** — All money or property granted by the state or by individuals for the advancement of learning is vested in the trustees. *Trustees of Univ. of Ga. v. Denmark*, 141 Ga. 390, 81 S.E. 238 (1914), overruled on other grounds, *Hood v. First Nat'l Bank*, 219 Ga. 283, 133 S.E.2d 19 (1963) (decided under former Code 1910, § 1364).

**Trustees exercise none of the functions of civil officers.** *Trustees of Univ. of Ga. v. Denmark*, 141 Ga. 390, 81 S.E. 238 (1914), overruled on other grounds, *Hood v. First Nat'l Bank*, 219 Ga. 283, 133 S.E.2d 19 (1963) (decided under former Code 1910, § 1364).

**All branches of university suable.** — By former section, the state expressly gave the state's consent for the university to be sued, and this includes all the branches of the university. *First Dist.*

Agri. & Mechanical Sch. v. Reynolds, 11 Ga. App. 650, 75 S.E. 1060 (1912) (decided under former Code 1910, § 1364).

**Cited** in Williams v. McIntosh County, 179 Ga. 735, 177 S.E. 248 (1934); Regents

of Univ. Sys. v. Trust Co., 186 Ga. 498, 198 S.E. 345 (1938); Galer v. Board of Regents of Univ. Sys., 239 Ga. 268, 236 S.E.2d 617 (1977); Board of Regents v. Atlanta Journal, 259 Ga. 214, 378 S.E.2d 305 (1989).

OPINIONS OF THE ATTORNEY GENERAL

**University boards and directors abolished and corporation established in their place.** — It was not the intent of this article to repeal any of the laws creating the institutions comprising the University of Georgia or its branches; the effect of this article was merely to abolish the boards of trustees or directors of these institutions and establish in their place the Regents of the University Sys-

tem of Georgia. 1970 Op. Att’y Gen. No. 70-173.

**Employment by board of regents constitutes employment by state department or agency.** — Employment by the board of regents in a position in the University System of Georgia is employment by or the rendition of services for a state department or agency. 1981 Op. Att’y Gen. No. 81-13.

RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 3.

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 12 et seq.

20-3-21. Composition; powers and duties generally.

The board of regents shall be composed of one member from each congressional district in the state and five additional members from the state at large, who shall be appointed by the Governor and confirmed by the Senate. The Governor shall not be a member of the board. The board shall have all the powers and duties now or hereafter provided by law. The board shall be subject to all provisions of law not inconsistent with this part. (Ga. L. 1931, p. 7, § 50; Code 1933, § 32-104; Ga. L. 1937, p. 526, § 1; Ga. L. 1943, p. 142, §§ 1, 2; Ga. L. 1943, p. 670, §§ 3, 6.)

OPINIONS OF THE ATTORNEY GENERAL

**Appointee may act as attorney or hold political party office.** — No impediment to membership on the board of regents exists by reason of an appointee acting as a county attorney, city attorney, or private attorney, or holding office in a political party. 1974 Op. Att’y Gen. No. 74-20.

**Regents may expend appropriated state funds for improvements on property leased from another govern-**

**ment branch,** the title to which is held by the State of Georgia. 1967 Op. Att’y Gen. No. 67-450.

**Regents may lawfully purchase a lessee’s interest in property recently purchased by the regents.** 1967 Op. Att’y Gen. No. 67-443.

**Regents may keep or dispose of unrestricted bequests of stock** as the regents deem to be in the regent’s best interests. 1967 Op. Att’y Gen. No. 67-129.



## JUDICIAL DECISIONS

**Cited** in Board of Regents of the Univ. Sys. v. Doe, 278 Ga. App. 878, 630 S.E.2d 85 (2006).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, §§ 9, 12, 13.

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 14.

**20-3-22. Terms of office.**

The first board of regents appointed under this part shall hold office as follows: two for one year; two for two years; two for three years; two for four years; two for five years; two for six years; and three for seven years. All of the terms shall date from January 1, 1943. The Governor in making the appointments shall designate the holders of the respective terms. Successors to the persons so appointed shall hold terms of office of seven years from the expiration of the previous term. All members of the board shall hold office until their successors are appointed. (Ga. L. 1931, p. 7, §§ 51, 52; Code 1933, §§ 32-105, 32-106; Ga. L. 1937, p. 526, § 1; Ga. L. 1943, p. 670, §§ 4, 5, 7, 8.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, §§ 9, 12 et seq.

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 13 et seq.

**20-3-23. Vacancies.**

In case of a vacancy on the board of regents by death, resignation, removal, or from any other cause other than the expiration of such member's term of office, such vacancy shall be filled in the manner prescribed by Article VIII, Section IV, Paragraph I of the Constitution. (Ga. L. 1931, p. 7, § 52; Code 1933, § 32-106; Ga. L. 1943, p. 670, §§ 5, 8; Ga. L. 1983, p. 495, § 2.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, §§ 9, 12, 13.

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 13.

**20-3-24. Chairman.**

The board of regents shall elect one of its members chairman. (Ga. L. 1931, p. 7, § 53; Code 1933, § 32-107.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, §§ 9, 12, 13.

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 12 et seq.

**20-3-25. Appointment of secretary; duties; bond.**

The board of regents shall elect a secretary, not a member thereof, for such term and salary as it may establish. The secretary shall maintain his office in the state capital and shall devote to the board his entire time. He shall give good and sufficient bond, payable to the Governor, for the faithful performance of his duties and for the faithful accounting for all funds coming into his hands as such secretary. The surety on such bond shall be a surety company duly qualified to do business in this state. The board may pay premiums for such bond out of funds coming into its hands. (Ga. L. 1931, p. 7, § 54; Code 1933, § 32-108.)

**20-3-26. Duty of members to attend meetings; vacation of office for unexcused absences.**

It shall be the duty of the members of the board of regents to attend the meetings of the board so as to take part in its deliberations. The office of any member of the board shall be vacated if he neglects to furnish an excuse in writing to the board for absence from two consecutive meetings of the board. If any member fails to attend three successive meetings of the board, without good and valid cause or excuse or without leave of absence from the chairman, or, if the chairman for any cause cannot act, from the vice-chairman of the board, his office shall be declared vacant by the board. The secretary shall in either event notify the Governor of a vacancy on the board, and the Governor shall fill the vacancy as provided by this part. (Ga. L. 1931, p. 7, § 56; Code 1933, § 32-109.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 4.

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 12 et seq.

**20-3-27. Inspections of institutions by committees; reports.**

The board of regents shall make at least one annual visit and inspection of each of the institutions in the university system through committees of not less than two of its members, who shall report their visits and inspections to the board. (Ga. L. 1931, p. 7, § 58; Code 1933, § 32-110.)

**20-3-28. Per diem allowances and travel expenses of members.**

Members of the board of regents shall receive the sum provided by Code Section 45-7-21 for each day of actual attendance at meetings of the board or for each day of travel, within or outside the state, as a member of a committee of the board, which travel has been authorized by the chairman or by action of the board, plus reimbursement for actual transportation costs while traveling by public carrier or the legal mileage rate for the use of a personal automobile to and from the place of meeting or places of visits or inspections. No member shall be authorized to receive the sums, expenses, and costs provided by this Code section for more than 60 days per year. Such sums, expenses, and costs shall be paid from funds appropriated to or otherwise available to the board. (Ga. L. 1931, p. 7, § 59; Code 1933, § 32-111; Ga. L. 1964, p. 454, § 1; Ga. L. 1971, p. 233, § 1; Ga. L. 1977, p. 226, § 1.)

**Cross references.** — Legal mileage allowance, § 50-19-7.

**JUDICIAL DECISIONS**

**Member may have laundry done at price less than commercial rate.** — This Code section does not make it unlawful for a member of the board of regents to have laundry and dry-cleaning done at a

price which is less than the commercial rate for such a service. *Villyard v. Regents of Univ. Sys.*, 204 Ga. 517, 50 S.E.2d 313 (1948).

**OPINIONS OF THE ATTORNEY GENERAL**

**Since board members' compensation is fixed by law,** board is without authority to increase compensation. 1973 Op. Att'y Gen. No. 73-167.

**Board may lawfully include per-**

**sonal liability insurance as part of the compensation** the board pays to the board's officers and employees. 1973 Op. Att'y Gen. No. 73-167.

**20-3-29. Separate appropriation for expense.**

The expense of the board of regents, other than that of the institutions under its control, shall be met out of a separate appropriation enacted for its maintenance and support. (Ga. L. 1931, p. 7, § 77; Code 1933, § 32-133.)

**OPINIONS OF THE ATTORNEY GENERAL**

**Board cannot donate supplies or services to credit union when expenses borne by General Assembly.** — Board of regents may not donate to a privately organized credit union any office

space, supplies, or telephone services when the expenses for these are borne by appropriations of the General Assembly. 1967 Op. Att'y Gen. No. 67-418.



**20-3-30. Procedural rules and regulations; terms of officers; powers and duties of former boards transferred.**

The board of regents may establish such rules and regulations for its own direction as it may deem proper; may fix the term of office of its chairman, its vice-chairman, and its secretary; and is vested with all of the powers, privileges, and rights vested in former boards of trustees of the University of Georgia and all former boards of trustees or directors of its branches. It is charged with all of the duties, obligations, and responsibilities incumbent upon or pertaining to the former boards. (Ga. L. 1931, p. 7, §§ 55, 65, 70; Code 1933, §§ 32-112, 32-127, 32-128.)

**JUDICIAL DECISIONS**

**Valid employment contract enforceable against state.** — Valid and authorized contract of employment between the state department having charge of the university system and a person for the position of instructor of one of the university's branches is enforceable against the state and should be performed by the state according to the contract's

terms and provisions. *Regents of Univ. Sys. v. Blanton*, 49 Ga. App. 602, 176 S.E. 673 (1934).

**Cited in** *State v. Regents of Univ. Sys.*, 179 Ga. 210, 175 S.E. 567 (1934); *Busbee v. Georgia Conference, Am. Ass'n of Univ. Professors*, 235 Ga. 752, 221 S.E.2d 437 (1975); *McCafferty v. Medical College*, 249 Ga. 62, 287 S.E.2d 171 (1982).

**OPINIONS OF THE ATTORNEY GENERAL**

**Board vested with title to trusts of former trustees.** — Board of regents is vested with title to, and is thereby trustee of, any trust of which the Trustees of the University of Georgia were trustees. 1971 Op. Att'y Gen. No. 71-146.

**Officials acting in good faith not liable to student expelled for breaking reasonable rules.** — As long as the

officials of the colleges and universities of the State of Georgia act in good faith while discharging their duties and responsibilities in enforcing the reasonable rules and regulations set down by the colleges and universities, the officials are not liable to any student expelled for breaking such rules and regulations. 1960-61 Op. Att'y Gen. p. 583.

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 4.

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 12 et seq.

**20-3-31. General powers.**

The board of regents shall have power:

- (1) To make such reasonable rules and regulations as are necessary for the performance of its duties;
- (2) To elect or appoint professors, educators, stewards, or any other officers necessary for all of the schools in the university system, as may be authorized by the General Assembly; to discontinue or remove

them as the good of the system or any of its schools or institutions or stations may require; and to fix their compensations;

(3) To establish all such schools of learning or art as may be useful to the state and to organize them in the way most likely to attain the ends desired; and

(4) To exercise any power usually granted to such corporation, necessary to its usefulness, which is not in conflict with the Constitution and laws of this state. (Ga. L. 1931, p. 7, § 61; Code 1933, § 32-121.)

**Cross references.** — Powers of board of regents as to construction, operation, and other requirements for dormitories for university system, § 8-3-17. Restriction on power of members of board of

regents to contract with state supported institutions, § 45-10-40 et seq. Filing with Secretary of State of conveyances of property to or from board of regents, § 50-16-123.

### JUDICIAL DECISIONS

**Paragraph (4) of this section is not indefinite, uncertain, or unconstitutional.** *Villyard v. Regents of Univ. Sys.*, 204 Ga. 517, 50 S.E.2d 313 (1948) (see O.C.G.A. § 20-3-31).

**Obligation incurred by board is not state debt and is not affected by constitutional limitations** upon state indebtedness. *State v. Regents of Univ. Sys.*, 179 Ga. 210, 175 S.E. 567 (1934).

**"Such corporation" refers to like corporations.** — Considering the history of this legislation, the phrase "such corporation" was not intended to designate the particular corporation, but should be understood as referring to like corporations; that is, the board of regents is to exercise any power usually granted corporations of like character. *State v. Regents of Univ. Sys.*, 179 Ga. 210, 175 S.E. 567 (1934).

**Regents may exercise usual powers of "such corporations".** — Limited only by their proper discretion and by the Constitution and law of this state, the Regents of the University System of Georgia may exercise any power usually granted to such corporations. *Villyard v. Regents of Univ. Sys.*, 204 Ga. 517, 50 S.E.2d 313 (1948).

**Regents are untrammelled in their duties and powers except by restraints of law** which are directly expressed or necessarily implied. *Villyard v. Regents of Univ. Sys.*, 204 Ga. 517, 50 S.E.2d 313 (1948).

While the University Board of Regents' Policy manual directed the member institutions to forward recommendations for new administrators and chaired professors to the board for approval, there was nothing in the manual that prevented the board from waiving this provision or from delegating the board's hiring authority to its member institutions. *Board of Regents of the Univ. Sys. v. Doe*, 278 Ga. App. 878, 630 S.E.2d 85 (2006).

**Regents have duty of deciding what is necessary for the usefulness of the various institutions** and a court of equity will not interfere with the regents' judgment unless it appears to be arbitrary and amounts to an abuse of discretion. *State v. Regents of Univ. Sys.*, 179 Ga. 210, 175 S.E. 567 (1934).

**Regents may enter into contract necessary for school institutions' usefulness.** — Although the state is the equitable and beneficial owner of all property now vested in the regents, who are the holders only of legal title, it does not follow that the regents may not enter into any contract which in the regents' reasonable discretion is necessary for the usefulness of school institutions, or may not incur liabilities in the regents' own name for that purpose. *State v. Regents of Univ. Sys.*, 179 Ga. 210, 175 S.E. 567 (1934).

**Regents authorized to buy land, construct buildings, and charge fees.** — Board of regents has authority to buy

land for college purposes, to construct dormitories, gymnasia, and other necessary buildings, and to charge reasonable fees for the buildings' use. *State v. Regents of Univ. Sys.*, 179 Ga. 210, 175 S.E. 567 (1934).

**Regents may lease gymnasia to corporate athletic associations** connected, respectively, with the institutions at which the buildings are located. *State v. Regents of Univ. Sys.*, 179 Ga. 210, 175 S.E. 567 (1934).

**Regents may charge reasonable student fees.** — There is no law, either constitutional or statutory, which prevents the board of regents from charging reasonable matriculation, laboratory, hospital, and athletic fees against students. *State v. Regents of Univ. Sys.*, 179 Ga. 210, 175 S.E. 567 (1934).

**Board of regents is vested with sufficient authority to issue bonds and to obtain loans.** *State v. Regents of Univ. Sys.*, 179 Ga. 210, 175 S.E. 567 (1934).

**No abuse of discretion appears in a proposal to require students to occupy new buildings** in preference to existing buildings in order that fees charged for the buildings' use may create an income to retire bonds issued for the

purpose of raising funds with which to construct the buildings. *State v. Regents of Univ. Sys.*, 179 Ga. 210, 175 S.E. 567 (1934).

**Valid employment contract enforceable against state.** — Valid and authorized contract of employment between the state department having charge of the university system and a person for the position of instructor of one of the university's branches is enforceable against the state and should be performed by the state according to the contract's terms and provisions. *Regents of Univ. Sys. v. Blanton*, 49 Ga. App. 602, 176 S.E. 673 (1934).

**Regents not enjoined from operating laundry service for those connected with school.** — Petition seeking to enjoin the regents from operating a laundry and dry-cleaning service at reduced prices in an educational institution for the benefit of students and persons connected with the school failed to set forth a cause of action. *Villyard v. Regents of Univ. Sys.*, 204 Ga. 517, 50 S.E.2d 313 (1948).

**Cited in** *Williams v. McIntosh County*, 179 Ga. 735, 177 S.E. 248 (1934); *Marshall v. Georgia S.W. College*, 489 F. Supp. 1322 (M.D. Ga. 1980).

## OPINIONS OF THE ATTORNEY GENERAL

### **Authorized regulations resulting from proper action have force of law.**

— When regulations pursuant to this section are the result of proper action and are based on a specific grant of authority, the regulations have the force and effect of state law. 1972 Op. Att'y Gen. No. 72-36 (see O.C.G.A. § 20-3-31).

**Purchase of motor vehicle legal when used only for transporting students.** — Purchase of a motor vehicle for the University of Georgia is legal if the vehicle is not to be used for the transportation of officers, officials, or employees of the state but only for transporting students carrying on lawful activities of the university. 1962 Op. Att'y Gen. p. 442.

Purchase with state funds of an automobile as an instrument carrier and field collections vehicle and to transport students on field trips in a course in plant

sciences at the University of Georgia is authorized. 1962 Op. Att'y Gen. p. 443.

**Regents may authorize units of university system to enter into tax-sheltered annuity plans for employees.** 1965-66 Op. Att'y Gen. No. 65-69.

**Regents may establish any form of compensation for employees.** — There is no constitutional provision or statute which would preclude the board of regents from establishing a trust fund or any other form of compensation for its own employees for performing educational work beneficial to the state. 1968 Op. Att'y Gen. No. 68-284.

**Establishment of tax deferred plans.** — Board of regents may authorize institutions within the university system to establish tax deferred plans allowed by § 401(k) of the Internal Revenue Code or



may enter into agreements establishing such plans for the benefit of employees at institutions within the university system. 1985 Op. Att'y Gen. No. 85-9.

**Establishment of deferred compensation plans.** — Board of regents may establish deferred compensation plans allowed by § 457 of the Internal Revenue Code. 1985 Op. Att'y Gen. No. 85-20.

**Selling supplies to government installations not objectionable when enterprise university related.** — Units in the University System of Georgia may operate incidental businesses, and this authority extends to such incidental enterprises being patronized by persons other than students and faculty members of the institution; selling supplies to federal and state installations is not objectionable so long as the primary purpose and justification for the enterprise is related to the operation of the university. 1970 Op. Att'y Gen. No. 70-27.

**Board may purchase insurance policy to protect another in exchange for rights under agreement.** — Board of regents may legally purchase a policy of public liability insurance to protect another party when the purchase is the consideration flowing in exchange for rights flowing to regents under an agreement. 1970 Op. Att'y Gen. No. 70-57.

**Board has power to extend health service program to spouses of students and their dependents.** 1972 Op. Att'y Gen. No. 72-120.

**Board may expend "matching funds" to secure federal grants for carrying out research projects which fall within the scope of the board's authorized activities, specifically, economic research to consider means of alleviating the unemployment and other economic problems which may be anticipated as the result of national defense program adjustments and the closure of military bases within the State of Georgia.** 1974 Op. Att'y Gen. No. 74-44.

**Board has concurrent jurisdiction over charges of unlawful employment discrimination.** — Georgia Office of Fair Employment Practices and the board of regents have concurrent jurisdiction over

charges of unlawful employment discrimination in the university system. If either GOFEP or the board of regents renders a final administrative determination, the other agency is barred from reconsidering those issues considered in the earlier administrative proceeding, provided the same parties are involved in both proceedings. 1980 Op. Att'y Gen. No. 80-74.

**Board is subject to coverage of Fair Employment Practices Act, Ga. L. 1978, p. 859, § 25 (see O.C.G.A. § 45-19-20 et seq.).** 1980 Op. Att'y Gen. No. 80-74.

**Component university institutions may market agricultural products produced upon lands and premises utilized by the university.** 1976 Op. Att'y Gen. No. U76-40.

**Regents not empowered to waive sovereign immunity.** — Judiciary of this state would find that the powers delegated to the regents do not include by clear implication the power to waive sovereign immunity by the contractual assumption of tort liability. 1965-66 Op. Att'y Gen. No. 66-261.

**Board of regents may not spend state funds to contract with collection agency which will assume responsibility for the collection of national defense student loans.** 1968 Op. Att'y Gen. No. 68-5.

**Ability of board to issue revenue obligations.** — Legal ability of the board of regents to incur debt by issuing revenue obligations is doubtful. 1988 Op. Att'y Gen. No. 88-21.

**Payment to employees of board for unused annual leave when transferring.** — Employees of the Board of Regents of the University System of Georgia may be paid for their unused annual leave when employees transfer from one member institution to another member institution provided that the policies of the board of regents are amended to authorize such a payment. 1990 Op. Att'y Gen. No. 90-23.

**Board of regents may lease lands in return for the endowment of a research chair if the endowment is equal to the fair market value of the lease and the term of the lease is reasonable.** 1995 Op. Att'y Gen. No. 95-25.

RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, §§ 4, 9, 12 et seq.

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 12 et seq.

**ALR.** — Right of student to hearing on charges before suspension or expulsion

from educational institution, 58 ALR2d 903.

Regulations as to fraternities and similar associations connected with educational institution, 10 ALR3d 389.

**20-3-31.1. Powers as to program for senior citizens to attend classes in University System of Georgia; continuation.**

(a) The board of regents is authorized and directed to establish a program whereby citizens of this state who are 62 years of age or older may attend units of the University System of Georgia without payment of fees, except for supplies and laboratory or shop fees, when space is available in a course scheduled for resident credit. Such program shall not include attendance at classes in dental, medical, veterinary, or law schools. Persons who attend units of the University System of Georgia under the program established pursuant to this Code section shall not be counted as students by the board of regents for budgetary purposes. The board of regents shall adopt and promulgate rules and regulations, not inconsistent with this Code section, to carry out the provisions of this Code section.

(b) The program for senior citizens provided for by subsection (a) of this Code section shall be a continuation, without interruption, of the program for elderly citizens heretofore established by the board of regents pursuant to the requirements of Article VIII, Section IV, Paragraph II of the Constitution of the State of Georgia of 1976. Such heretofore established program is ratified, confirmed, and continued without the necessity of the reestablishment of such program by the board of regents. (Code 1981, § 20-3-31.1, enacted by Ga. L. 1983, p. 496, § 1.)

**Cross references.** — Authorization of educational assistance programs, Ga. Const. 1983, Art. VIII, Sec. VII, Para. I.

**20-3-32. Powers as to institutions, departments, courses, and degrees of university system.**

(a) The board of regents is authorized to consolidate, suspend, or discontinue institutions; merge departments; inaugurate or discontinue courses; and abolish or add degrees.

(b) Whenever any such modifications, changes, consolidations, or suspensions are put into effect, the board is authorized to readjust

budgets to the extent necessary by the reallocation of the moneys appropriated for the institutions affected.

(c) Where similarity in names among the several institutions gives rise to confusion, the board may rename them. (Ga. L. 1933, p. 62, §§ 1-3; Code 1933, §§ 32-124, 32-125, 32-126.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, §§ 4, 41.

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 12 et seq.

#### 20-3-33. Investment of trust funds in real estate or improvements.

It shall be lawful for the board of regents to invest any trust funds held by the board in real estate or in any improvements or buildings which the board in its discretion may see fit to make or erect thereon; provided, however, that no money belonging to any trust fund shall be used for such purpose or purposes if such use or uses would be contrary to the specific provisions of the instrument setting up the trust; and provided, further, all investments made of trust funds under this Code section shall in the judgment of the board be revenue producing investments wherever the trust funds so invested are of a trust which requires investment to produce revenue. (Ga. L. 1937, p. 901, § 1.)

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**Former § 53-13-54** (see **O.C.G.A. § 53-12-280**) implemented **Ga. L. 1937, p. 901, § 1** (see **O.C.G.A. § 20-3-33**) in providing legal investments which can be made by trustees. 1971 Op. Att'y Gen. No. 71-20.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 41.

**C.J.S.** — 14A C.J.S., Colleges and Universities, §§ 10, 11.

#### 20-3-34. Fiscal year.

The fiscal year of the board of regents and all institutions of the university system is from July 1 in each year through June 30 in the following year. (Ga. L. 1933, p. 63, § 1; Code 1933, § 32-131; Ga. L. 1935, p. 169, § 1.)

#### 20-3-35. Annual reports to Governor.

The board of regents shall submit to the Governor annual reports of its transactions, together with such information as is necessary to show the condition of the university system and with such suggestions as it



may deem conducive to the good of the system and the cause of education. (Ga. L. 1931, p. 7, § 60; Code 1933, § 32-129.)

### 20-3-36. Applicability of sovereign immunity doctrine.

The applicability of the doctrine of sovereign immunity to the board of regents is reaffirmed, except to the extent that the General Assembly may expressly provide. (Ga. L. 1976, p. 452, § 1.)

**Cross references.** — Waiver of sovereign immunity in nuclear facility liability insurance, § 20-3-71. Waiver of sovereign immunity in actions for breach of written contracts entered into by the state, its departments, and others, § 50-21-1.

**Editor's notes.** — Ga. L. 1976, p. 452, § 2, not codified by the General Assembly, provides: "That part of section 3 of an Act providing for the establishment of a public seat of learning in Georgia and creating

'the Trustees of the University of Georgia,' approved January 27, 1785 (Ga. L. 1785, pp. 560, 561, Sec. 3; Cobb's Digest, pp. 1082, 1084, Sec. III), which provides that the said trustees 'shall and may be a person in law, capable to plead and be impleaded, defend and be defended, answer and be answered unto,' as amended, is hereby repealed in its entirety."

**Law reviews.** — For survey article on torts, see 34 Mercer L. Rev. 271 (1982).

## JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1935, p. 7, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Section conflicts with Constitution, which does not prevent suit by or against board of regents.** — Since it is clear that the power to sue and be sued existed in the board of regents at the time of the adoption of the 1943 constitutional amendment and the 1945 Constitution and was reenacted as part of the 1976 Constitution, an Act attempting to provide sovereign immunity for the board of regents is in direct conflict with the constitution. As to the board of regents, O.C.G.A. § 20-3-36 is an attempt to diminish the powers and duties of the board of regents contrary to the constitution, and in no way prevents the board of regents from suing to protect the board's other powers and duties or from being sued. *McCafferty v. Medical College*, 249 Ga. 62, 287 S.E.2d 171 (1982).

**Regents immune from suit.** — Although the Regents of the University System of Georgia is a corporate body, estab-

lished by O.C.G.A. § 20-3-20, neither that section nor any other provision following the statute have granted the corporation any power to sue or be sued. The regents are therefore immune from suit under O.C.G.A. § 20-3-36, since the powers and duties of the corporation do not have the constitutional status of the board of regents' powers and duties. *McCafferty v. Medical College*, 249 Ga. 62, 287 S.E.2d 171 (1982).

**Suit against regents is suit against the state and cannot be maintained without the state's consent.** *Ramsey v. Hamilton*, 181 Ga. 365, 182 S.E. 392 (1935) (decided under former Ga. L. 1935, p. 7).

**Board's immunity under the doctrine of sovereign immunity was not waived,** when an endorsement eliminating the self-insurance character of the board's insurance plan was not void for any failure to comply with the provisions of the Insurance Code, which does not apply to the board. *Board of Regents v. Tyson*, 261 Ga. 368, 404 S.E.2d 557 (1991).

Board's immunity under the doctrine of sovereign immunity was not waived, when hospital records, including a "consent to care" form, upon which a patient's

action was based, did not constitute a written contract. *Board of Regents v. Tyson*, 261 Ga. 368, 404 S.E.2d 557 (1991).

**Board's sovereign immunity was waived.** — Trial court properly granted summary judgment to an applicant for university employment as to the issue of finding a valid and written contract, thus finding that the state's sovereign immunity was waived; however, summary judgment was reversed as jury issues remained as to: (1) whether the university board of regents breached the contract; (2) whether university officials violated an implied duty to use their best efforts to secure the board's approval of the applicant's appointment, whether the officials acted in bad faith when the applicants withdrew the appointment, and whether the officials were solely responsible for the

failure of the board to vote on the appointment; and (3) whether the applicant's alleged misconduct rendered the continued pursuit of the appointment impossible or impracticable, and whether the applicant ratified the withdrawal of the appointment. *Board of Regents of the Univ. Sys. v. Doe*, 278 Ga. App. 878, 630 S.E.2d 85 (2006).

**Cited in** *Meadows Motors, Inc. v. Department of Admin. Servs.*, 141 Ga. App. 224, 233 S.E.2d 14 (1977); *Goolsby v. Regents of Univ. Sys.*, 141 Ga. App. 605, 234 S.E.2d 165 (1977); *C.F.I. Constr. Co. v. Board of Regents of Univ. Sys.*, 145 Ga. App. 471, 243 S.E.2d 700 (1978); *Nat'l Ass'n of Bds. of Pharm. v. Bd. of Regents of the Univ. Sys. of Ga.*, No. 3:07-CV-084 (CDL), 2008 U.S. Dist. LEXIS 32116 (M.D. Ga. Apr. 18, 2008).

## OPINIONS OF THE ATTORNEY GENERAL

**Employment by board of regents constitutes employment by state department or agency.** — Employment by the board of regents in a position in the

University System of Georgia is employment by or the rendition of services for a state department or agency. 1981 Op. Att'y Gen. No. 81-13.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 44.

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 53.

**ALR.** — Remedy available against invalid judgment in favor of United States, state, or other governmental unit immune to suit, 163 ALR 244.

Civil liability of school officials for malicious prosecution, 66 ALR2d 749.

Tort liability of public schools and institutions of higher learning, 86 ALR2d 489.

Modern status of doctrine of sovereign immunity as applied to public schools and institutions of higher learning, 33 ALR3d 703.

Tort liability of public schools and institutions of higher learning for accidents due to condition of buildings or equipment, 34 ALR3d 1166.

Tort liability of public schools and institutions of higher learning for accident occurring during school athletic events, 35 ALR3d 725.

Tort liability of public schools and insti-

tutions of higher learning for accidents associated with chemistry experiments, shopwork, and manual or vocational training, 35 ALR3d 758.

Tort liability of private schools and institutions of higher learning for accidents due to condition of buildings, equipment, or outside premises, 35 ALR3d 975.

Tort liability of public schools and institutions of higher learning for injuries resulting from lack or insufficiency of supervision, 38 ALR3d 830.

Liability of school authorities for hiring or retaining incompetent or otherwise unsuitable teacher, 60 ALR4th 260.

Tort liability of college, university, fraternity, or sorority for injury or death of member or prospective member by hazing or initiation activity, 68 ALR4th 228.

Admissibility, in homicide prosecution, of evidence as to tests made to ascertain distance from gun to victim when gun was fired, 11 ALR5th 497.

Tort liability of public schools and institutions of higher learning for accidents

associated with the transportation of students, 23 ALR5th 1.

**20-3-37. Contracts with hospitals for clinics and training medical students.**

The board of regents is authorized to contract with any hospital for clinical purposes and for the training of medical students of the university system. (Ga. L. 1945, p. 453, § 3.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 4.      **C.J.S.** — 14A C.J.S., Colleges and Universities, § 6 et seq.

**20-3-38. Agricultural extension work.**

(a) The assent of the General Assembly is given to the act of Congress approved by the President on May 8, 1914, entitled “An act to provide for cooperative agriculture extension work between the United States Department of Agriculture and the agricultural colleges of the several states receiving and which may hereafter receive the benefits of an act of Congress of the United States, approved July 2, 1862, to encourage the states to provide colleges for the benefit of agriculture and the mechanic arts, and of acts supplementary thereto” (7 U.S.C.A. Sections 341 to 348).

(b) The board of regents is authorized to receive the grants of money appropriated under the act of Congress referred to in subsection (a) of this Code section and to organize and conduct agricultural extension work which shall be carried on in connection with the terms and conditions expressed in such act of Congress. (Ga. L. 1914, p. 1243.)

**Cross references.** — Authority of boards of education with regard to agricultural tax levying authorities and county tax levying authorities and county agricultural extension work, § 20-2-62.

**20-3-39. Reassignment of responsibilities for operation and management of public libraries; employees; transfer of funding; rules and regulations.**

(a) Effective July 1, 2000, the board of regents shall carry out all the functions and exercise all of the powers formerly held by the Department of Technical and Adult Education, now known as the Technical College System of Georgia, for the operation and management of public library services and public libraries. Subject to subsection (b) of this Code section, all persons employed by and positions authorized for the Department of Technical and Adult Education, now known as the Technical College System of Georgia, to perform these functions on



June 30, 2000, shall, on July 1, 2000, be transferred to the board of regents. All office equipment, furniture, and other assets in possession of the Department of Technical and Adult Education, now known as the Technical College System of Georgia, which are used or held exclusively or principally by personnel transferred under this subsection shall be transferred to the board of regents on July 1, 2000.

(b) All transfers of employees and assets provided for in subsection (a) of this Code section shall be subject to the approval of the board of regents, and such personnel or assets shall not be transferred if the board of regents determines that a specific employee or asset should remain with the transferring agency.

(c) Employees who are transferred to the board of regents pursuant to this Code section shall be subject to the employment practices and policies of the board on and after July 1, 2000, but the compensation and benefits of such transferred employees shall not be reduced as a result of such transfer. Employees who are subject to the rules of the State Personnel Board and who are transferred to the board of regents shall retain all existing rights under such rules. Retirement rights of such transferred employees existing under the Employees' Retirement System of Georgia or other public retirement systems on June 30, 2000, shall not be impaired or interrupted by the transfer of such employees and membership in any such retirement system shall continue in the same status possessed by the transferred employees on June 30, 2000. Accrued annual and sick leave possessed by said employees on June 30, 2000, shall be retained by said employees as employees of the board.

(d) Funding for functions and positions transferred to the board of regents under this Code section shall be transferred as provided in Code Section 45-12-90.

(e) The board of regents shall succeed to all rules, regulations, policies, procedures, and administrative orders of the Department of Technical and Adult Education, now known as the Technical College System of Georgia, where applicable, which are in effect on June 30, 2000, and which relate to the functions transferred to the board. Such rules, regulations, policies, and procedures shall remain in effect until amended, repealed, superseded, or nullified by the board of regents. (Code 1981, § 20-3-39, enacted by Ga. L. 2000, p. 618, § 76; Ga. L. 2008, p. 335, § 2/SB 435; Ga. L. 2009, p. 8, § 20/SB 46; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-24/HB 642.)

**The 2012 amendment**, effective July 1, 2012, in subsection (c), deleted "and thereby under the State Personnel Administration" following "State Personnel Board", and substituted "under such

rules" for "under the State Personnel Administration" in the second sentence.

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and

may be cited as the ‘A Plus Education Reform Act of 2000.’”

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the

effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

20-3-40. Georgia Capitol Museum.

(a) The operation of the Georgia Capitol Museum which was formerly under the control and supervision of the Secretary of State shall as of July 1, 2011, be transferred to the Board of Regents of the University System of Georgia. The board of regents shall designate one or more persons to carry out any duties formerly carried out by the director of the museum. The transfer shall include real property relating to the museum.

(b) The board of regents shall maintain the exhibits for the museum and may prepare and distribute publications concerning the museum’s features, prepare semitechnical materials for distribution to the schools of this state, conduct tours of the museum and state capitol, and perform such other duties and functions as are ordinarily exercised in the operation of a museum.

(c) The board of regents is authorized to receive, on behalf of the state, any grants, donations, or gifts of money or property for use in the museum.

(d) Any funds appropriated for the operation of the Georgia Capitol Museum may be transferred as provided in Code Section 45-12-90. (Code 1981, § 20-3-40, enacted by Ga. L. 2011, p. 617, § 1/SB 190.)

**Effective date.** — This Code section became effective July 1, 2011.

PART 2

UNIVERSITY SYSTEM

RESEARCH REFERENCES

**ALR.** — Misconduct of college or university student off campus as grounds for expulsion, suspension, or other disciplinary action, 28 ALR4th 463.

20-3-50. Institutions in system.

The university system shall consist of the University of Georgia and all of its branches. (Ga. L. 1931, p. 7, § 46; Code 1933, § 32-102.)

**Editor's notes.** — By resolution (Ga. L. 1985, p. 598), the General Assembly expressed its approval of the acquisition of DeKalb Junior College by the Board of

Regents of the University System of Georgia and the operation of the college as a unit of the University System of Georgia.

### JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1397, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Section simply designates certain institutions as branches of the university** and provides that such branches are to be governed "in the manner prescribed in the respective acts incorporating the same." *Medical College v. Rushing*, 1 Ga. App. 468, 57 S.E. 1083 (1907) (decided under former Code 1910, § 1397).

**Trustees of the State Normal School have authority to ordain and establish rules and by-laws** for the regulation

of the school and the training and governing of the students as in their opinion may be proper to secure the success of the school. *Davison-Nicholson Co. v. Pound*, 147 Ga. 447, 94 S.E. 560 (1917) (decided under former Code 1910, § 1397).

**Medical College of Georgia is liable for the torts of its agents** in the conduct of its business and within the scope of its authority. *Medical College v. Rushing*, 1 Ga. App. 468, 57 S.E. 1083 (1907) (decided under former Code 1910, § 1397).

**Cited** in *State v. Regents of Univ. Sys.*, 179 Ga. 210, 175 S.E. 567 (1934); *Galer v. Board of Regents of Univ. Sys.*, 239 Ga. 268, 236 S.E.2d 617 (1977); *McCafferty v. Medical College*, 249 Ga. 62, 287 S.E.2d 171 (1982).

### 20-3-51. Regents to govern system.

The government, control, and management of the university system and all of its institutions shall be vested in the board of regents. (Ga. L. 1931, p. 7, §§ 48, 69; Code 1933, §§ 32-113, 32-115.)

### JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1398(2), which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Regents of the University System of Georgia is a distinct corporate entity**, though controlled by a board of regents. *State v. Regents of Univ. Sys.*, 179 Ga. 210, 175 S.E. 567 (1934).

**Power to make rules for State Normal School has not been abrogated or changed** by any subsequent act of the legislature. *Davison-Nicholson Co. v. Pound*, 147 Ga. 447, 94 S.E. 560 (1917) (decided under former Code 1910, § 1398(2)).

**If good faith discretion, no liability to one with whom students forbidden to deal.** — Wide discretion is necessarily vested in the governing board to determine the conditions on which persons may deal with the institution or student body, and if this discretion is exercised in good faith, there will, in general, according to respectable authority, be no liability to one with whom the students have been forbidden to deal. *Davison-Nicholson Co. v. Pound*, 147 Ga. 447, 94 S.E. 560 (1917) (decided under former Code 1910, § 1398(2)).

**Cited** in *Williams v. McIntosh County*, 179 Ga. 735, 177 S.E. 248 (1934); *Marshall v. Georgia S.W. College*, 489 F. Supp. 1322 (M.D. Ga. 1980); *Columbus College v. Shore*, 707 F.2d 1337 (11th Cir. 1983).



OPINIONS OF THE ATTORNEY GENERAL

**University boards and directors abolished and regents established in their place.** — It was not the intent of the General Assembly to repeal any of the laws creating the institutions comprising the University of Georgia or its branches; the effect of this statute was merely to abolish the boards of trustees or directors of these institutions and establish in the board's place the Regents of the University System of Georgia. 1970 Op. Att'y Gen. No. 70-173.

**Former Code 1933, § 32-911, strictly construed, applied only to county boards of education** and should not be extended by construction or implication so as to repeal or amend the constitutional and statutory provisions applicable to the powers of the Board of Regents of the University System of Georgia to make rules and regulations with respect to en-

trance requirements for any of the university's institutions, including admission requirements concerning physical examinations, vaccination against smallpox, and immunization against tetanus and poliomyelitis. 1960-61 Op. Att'y Gen. p. 571 (rendered under former Code 1933, § 32-911, prior to revision by Ga. L. 1981, p. 756, § 1).

**Board of regents may promulgate such rules regulating students' off-campus housing as are reasonably necessary** to the government, control, and management of the institution and its purpose of providing an education to the students; if the board finds it necessary that students living in off-campus facilities remain in such facilities for a specific period of time, it would be in order to promulgate a rule to that effect. 1967 Op. Att'y Gen. No. 67-59.

RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, §§ 4, 9, 12 et seq.

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 12 et seq.

20-3-52. Continuation of Acts as to University of Georgia.

All Acts of the General Assembly relative to the University of Georgia and to each of its branches in force on January 1, 1932, if not embraced in this article and not inconsistent with what is so embraced, are still of force and effect. (Ga. L. 1931, p. 7, §§ 67, 75; Code 1933, § 32-114.)

JUDICIAL DECISIONS

**Section appears to be abbreviated statement of provisions of § 3 of Act of 1785.** State v. Regents of Univ. Sys., 179 Ga. 210, 175 S.E. 567 (1934).

**Cited in** Williams v. McIntosh County,

179 Ga. 735, 177 S.E. 248 (1934); Busbee v. Georgia Conference, Am. Ass'n of Univ. Professors, 235 Ga. 752, 221 S.E.2d 437 (1975); McCafferty v. Medical College, 249 Ga. 62, 287 S.E.2d 171 (1982).

OPINIONS OF THE ATTORNEY GENERAL

**Regents not empowered to waive sovereign immunity.** — Judiciary of this state would find that the powers delegated to the regents do not include by

clear implication the power to waive sovereign immunity by the contractual assumption of tort liability. 1965-66 Op. Att'y Gen. No. 66-261.

### 20-3-53. Authority to allocate appropriations among institutions.

All appropriations for the use of any or all institutions in the university system shall be paid to the board of regents in a lump sum, with the power and authority in said board to allocate or distribute them among the institutions under its control in such a way and manner and in such amount or amounts as will further an efficient and economical administration of the system. (Ga. L. 1933, p. 61, § 1; Code 1933, § 32-116.)

### JUDICIAL DECISIONS

**Cited** in *Perry v. Regents of Univ. Sys.*, 127 Ga. App. 42, 192 S.E.2d 518 (1972); *Marshall v. Georgia S.W. College*, 489 F. Supp. 1322 (M.D. Ga. 1980).

### OPINIONS OF THE ATTORNEY GENERAL

**Depository required to give security when deposits exceed maximum insured.** — All funds under the control of the board of regents belong to the state and a depository should be required to give security when the total state deposits exceed the \$5,000.00 maximum insured by the federal government. 1945-47 Op. Att'y Gen. p. 226.

**Purchase of motor vehicle legal when used only for transporting students.** — Purchase of a motor vehicle for the University of Georgia is legal when the vehicle is not to be used for the transportation of officers, officials, or employees of the state but only for transporting stu-

dents carrying on lawful activities of the university. 1962 Op. Att'y Gen. p. 442.

**Purchase with state funds of an automobile as an instrument carrier and field collections vehicle and to transport students on field trips in a course in plant sciences at the University of Georgia is authorized.** 1962 Op. Att'y Gen. p. 443.

**Board not authorized to transfer income to corporation for liquidating revenue bonds.** — Board of regents is not authorized to transfer income received by the board to a corporation for the purpose of liquidating the revenue bonds previously issued by that corporation. 1945-47 Op. Att'y Gen. p. 235.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 41.

**C.J.S.** — 14A C.J.S., Colleges and Universities, §§ 6 et seq., 14.

### 20-3-54. Use of funds donated for particular institution.

Unless directed otherwise by the General Assembly, the board of regents shall not use any moneys or properties received from any source other than appropriations by the legislature except for the benefit of the institution for whose use the money or property was donated. (Ga. L. 1931, p. 7, § 72; Code 1933, § 32-117.)

RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 41.      **C.J.S.** — 14A C.J.S., Colleges and Universities, § 6 et seq.

**20-3-55. Payment of appropriations; bond of official receiving funds; use of fees by institutions.**

The Office of the State Treasurer is directed, out of any unexpended appropriation to the University of Georgia and any of its branches, to pay to the board of regents, at periods and times provided by law, such sums as may be requisitioned by the board and as may be approved by the Governor, upon warrants of the Governor, to and for the use of the University of Georgia or any of its branches or any or each of them, respectively. All money or sums of money payable under this Code section to the board shall be paid to an official elected or appointed by the board, which official shall, on or before entering upon the discharge of his duties, give good and solvent bond with a surety company qualified to do business in this state as surety for the faithful performance of his duties and faithful accounting for all moneys coming into his hands as such official, which bond shall be payable to the Governor and his successor in office. The premium for such bond may be paid out of funds lawfully coming into the hands of the board. The board, however, in its discretion, may authorize the local treasurer of any of the educational institutions to retain such matriculation and other fees as the board deems proper to facilitate the prompt payment of incidental expenses of said institution, strict account being made to the board as to all such receipts and expenditures. (Ga. L. 1931, p. 7, § 73; Code 1933, § 32-132; Ga. L. 1972, p. 1015, § 408B; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

**The 2010 amendment,** effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” near the beginning of the first sentence.      **Cross references.** — Official bonds generally, T. 45, C. 4.

RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, §§ 36, 37, 38.

**20-3-56. Trust funds or property vested in regents on behalf of particular institution.**

Any trust fund or property, real, personal, or mixed, that may have been created prior to January 1, 1932, by will or otherwise as a fund or gift or donation or devise to any board of trustees of any of the



institutions in the university system, or to any executor or trustee to and for the use, benefit, or behoof of any such institution shall not lapse by virtue of any of the provisions of this article, but such trust shall remain valid and of full force and effect; and the beneficial interest under any such deed of gift or will or other conveyance shall vest in the board of regents as trustee to and for the use, benefit, and behoof of the institution intended to be benefited by such gift, devise, or other conveyance in its favor. In any case where provisions of any deed of gift, or will, or other conveyance referred to in this Code section require a trustee and no trustee shall in any contingency exist, the board shall be and become a substituted trustee to carry out the beneficial purposes of such gift, devise, or conveyance. (Ga. L. 1931, p. 7, § 49; Code 1933, § 32-118.)

**Cross references.** — Charitable trusts, T. 53, C. 12, A. 6.

### JUDICIAL DECISIONS

**Cited** in Regents of Univ. Sys. v. Trust Co., 186 Ga. 498, 198 S.E. 345 (1938).

### OPINIONS OF THE ATTORNEY GENERAL

**Board vested with title to trusts of former trustees.** — Board of regents is vested with title to, and is thereby trustee of, any trust of which the Trustees of the University of Georgia were trustees. 1971 Op. Att'y Gen. No. 71-146.

### 20-3-57. Property of institutions vested in regents separately.

Title to all real, personal, and mixed property of whatever nature of each of the branches of the University of Georgia is vested in the board of regents, to be held by the board in trust for the benefit and use of the institutions entitled thereto, it being the purpose and intent of the General Assembly that the board shall hold title to the property or assets of each institution so that each institution shall receive the use and benefit of the property devoted to its use; and in no event shall the property or assets of one institution be subject to the liabilities or obligations of any other institution; provided, however, that this restriction shall not prevent the board from utilizing the facilities, educational or otherwise, of one school for the advancement or assistance of another. (Ga. L. 1931, p. 7, § 71; Code 1933, § 32-119.)

### JUDICIAL DECISIONS

**Cited** in State v. Regents of Univ. Sys., 179 Ga. 210, 175 S.E. 567 (1934); Regents of Univ. Sys. v. Trust Co., 186 Ga. 498, 198 S.E. 345 (1938).

### OPINIONS OF THE ATTORNEY GENERAL

**Board not precluded from establishing any form of compensation for employees.** — There is no constitutional provision or statute which would preclude the board of regents from establishing a trust fund or any other form of compensation for the board's own employees for

performing educational work beneficial to the state. 1968 Op. Att'y Gen. No. 68-284.

**State institution has no authority to execute property damage waiver in transactions involving state property.** 1963-65 Op. Att'y Gen. p. 699.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 35.

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 9.

### 20-3-58. Condemnation of private or public property for system.

(a) The board of regents is authorized to take or damage, by condemnation, private property for public purposes of the university system upon paying or tendering to the owner thereof just compensation. Condemnation proceedings by the board may take the forms provided in Chapter 2 of Title 22.

(b)(1) As used in this subsection, the term "public property" has the meaning provided for in Code Section 50-16-180.

(2) The board of regents is also authorized to acquire public property or an interest therein by condemnation and the power of eminent domain when such acquisition is approved by the State Commission on the Condemnation of Public Property as provided in Code Section 50-16-183. Condemnation proceedings by the board may take the forms provided in Article 3 of Chapter 2 of Title 22. (Ga. L. 1939, p. 411, § 1; Ga. L. 1986, p. 1187, § 2; Ga. L. 1987, p. 3, § 20.)

### 20-3-59. Power of local school boards to add facilities to university system; bond issues.

The board of education of any county school district or the governing body of any independent school system in providing an adequate public school system shall have the right and authority either alone or in conjunction with another district or system:

(1) To acquire real property and to acquire, construct, and equip buildings and facilities for education beyond the twelfth grade and to convey any such property so acquired to the board of regents, its successors, or assigns; and

(2) To contribute funds to the board of regents, acting for and on behalf of the board of regents, to be applied toward the acquisition of real property and the acquisition, construction, and equipping of buildings and facilities for education beyond the twelfth grade.

In addition to the foregoing powers, each such governing body shall have the right and authority to issue bonds in accordance with the Constitution and laws of this state for any of the aforesaid purposes; provided, only, that prior to exercising such right or authority, any such board of education or governing body shall have agreed by contract to convey any such property so acquired or to contribute such funds, and the board of regents, acting as aforesaid, shall have agreed to accept any such property or contribution and to acquire, construct, and equip such buildings and facilities and to operate and maintain them as a unit of the university system rather than as a part of the public school system of this state. (Ga. L. 1919, p. 288, § 107; Code 1933, § 32-933; Ga. L. 1963, p. 617, § 1.)

### JUDICIAL DECISIONS

**Editor's notes.** — Some of the following cases were decided prior to the 1981 recodification, under which this Code section also provided for the establishment of high schools and junior high schools.

**Statute is an addition to the authority to establish and maintain county public schools,** which includes high schools. *Bedingfield v. Parkerson*, 212 Ga. 654, 94 S.E.2d 714 (1956).

**Statute silent as to location of schools.** — Respecting the location of the high schools or junior high schools which a county board of education may establish

in its county, this section is completely silent as to the place or places therefor. *Patterson v. Boyd*, 211 Ga. 679, 87 S.E.2d 861 (1955).

**Equity will not interfere with schools' management** unless the board has clearly acted without authority of law. *Patterson v. Boyd*, 211 Ga. 679, 87 S.E.2d 861 (1955).

**Cited in** *Davis v. Ware County Bd. of Educ.*, 117 Ga. App. 388, 160 S.E.2d 674 (1968); *Grimes v. Clark*, 226 Ga. 195, 173 S.E.2d 686 (1970).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, §§ 6, 36 et seq. 68 Am. Jur. 2d, Schools, §§ 45, 78, 86 et seq., 125 et seq.

**C.J.S.** — 14A C.J.S., Colleges and Universities, §§ 1, 4. 78 C.J.S., Schools and

School Districts, §§ 452, 453. 78A C.J.S., Schools and School Districts, §§ 756 et seq., 1068 et seq.

**ALR.** — Zoning regulations as applied to public elementary and high schools, 74 ALR3d 136.

### 20-3-60. When properties of system may be sold, leased, or otherwise disposed of; effect of restrictions on use; works of art.

(a) All properties owned or held by the board of regents pursuant to this chapter which have been declared to be the public property of the state may be sold, leased, or otherwise disposed of by the board subject to the approval of the Governor, whenever the board may deem such sale, lease, or other disposition in the best interests of the system, if the board shall first determine that such property can no longer be advantageously used in the system; provided, however, that where any



such property has been granted or conveyed to the system or the board or any institution embraced within the system, or the trustees thereof, for specified uses, such property shall only be sold, leased, conveyed, or otherwise disposed of for similar uses or purposes, which shall be in conformity with any use or trust declared in any such grant or conveyance.

(b) Nothing in this Code section shall prevent the board of regents from leasing laboratory and research facilities owned by the board of regents to private businesses, companies, and corporations for the purpose of small business and economic development during times when the laboratory and research facilities are not in use.

(c)(1) As used in this subsection, the term “work of art” means any work of visual art. The term “work of art” includes, but is not limited to, drawings, paintings, murals, frescoes, sculptures, mosaics, films, videos, photographs, calligraphy, etchings, lithographs, offset prints, silk screens, crafts, jewelry, and mixed media, including collages, assemblages, or any combination of the foregoing art media. The term “work of art” does not include environmental landscaping placed about a state building.

(2) Notwithstanding any other provision of law, including this Code section and Article 4 of Chapter 5 of Title 50, and upon finding that such action is in the best interests of the system and that a work of art owned or held by the board of regents can no longer be advantageously used in the system, the board of regents may:

(A) Sell such work of art to the highest responsible bidder for cash;

(B) Sell or transfer such work of art to any department, board, commission, or other agency of the State of Georgia;

(C) Sell such work of art, or transfer such work of art in exchange for substantial benefits, to any private nonprofit agency; or

(D) Dispose of such work of art as provided in Article 4 of Chapter 5 of Title 50;

provided, however, that where any such work of art has been granted or conveyed to the system or the board or any institution embraced within the system, or the trustees thereof, for specified uses, the board’s action under this subsection shall be in conformity with any use or trust declared in any such grant or conveyance. (Ga. L. 1935, p. 168, § 1; Ga. L. 1987, p. 1020, § 1; Ga. L. 1998, p. 186, § 1.)

**Cross references.** — Authority of board of regents to convey or lease property to municipal or county housing au-

thorities for construction of dormitory housing projects, § 8-3-17.

### JUDICIAL DECISIONS

**Action of delegated authority in making contract deemed action of state.** — When the legislature has delegated the legislature's authority to make a contract to certain officers, or a public board or department of the state government, the action of such a delegated authority in the matter of making a contract is the action of the state. *State v. Davison*, 198 Ga. 27, 31 S.E.2d 225 (1944).

**Regents authorized to lease unusable property to fraternity.** — Regents had authority to enter into a contract to lease property which the university system could no longer advantageously use to a university fraternity for \$1.00 per year so long as there is no abuse of discretion. *State v. Davison*, 198 Ga. 27, 31 S.E.2d 225 (1944).

### OPINIONS OF THE ATTORNEY GENERAL

**Statutes consistent with budgetary provisions.** — Ga. L. 1935, p. 168, §§ 1 through 3, which authorize the regents to sell excess property and to retain the proceeds, have been ruled to be consistent with the Budget Act, Ga. L. 1962, p. 17, § 1 et seq. 1977 Op. Att'y Gen. No. 77-77.

**Board may sell property at less than appraised value.** — If the board of regents determines that property may no longer be used advantageously in the university system, the board may, with the approval of the Governor, sell the property to the highest bidder even though the highest bid is less than the appraised value of the property, provided the board deems the sale to be in the best interests of the university system. 1965-66 Op. Att'y Gen. No. 66-146.

**Proceeds of sale of property by board** are used for support of system and branches. 1962 Op. Att'y Gen. p. 590.

**Regents, as lessor, give notice of termination and cancellation of lease.** — Even though this section requires the approval of the Governor as to any sale, lease, or other disposition of property held by the regents, the Governor is not the lessor; the regents are the lessor, and the board is the proper party to give the notice of termination or cancellation of the lease by and through the board's chair and executive secretary without the approval of the Governor. 1963-65 Op. Att'y Gen. p. 529 (see O.C.G.A. § 20-3-60).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 41.

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 6 et seq.

### 20-3-61. How conveyances executed.

In case of any sale, lease, or disposition of property under Code Section 20-3-60, the board of regents, through its proper officers, and the Governor, on behalf of the state, shall execute and deliver such written evidence of title or of the creation of a leasehold interest as may be necessary. (Ga. L. 1935, p. 168, § 2.)

**Cross references.** — Authority of board of regents to convey or lease property to municipal or county housing authorities for construction of dormitory housing projects, § 8-3-17.

OPINIONS OF THE ATTORNEY GENERAL

**Sections consistent with budgetary provisions.** — Ga. L. 1935, p. 168, §§ 1 through 3, which authorize the regents to sell excess property and to retain the proceeds, have been ruled to be consistent with the Budget Act, Ga. L. 1962, p. 17, § 1 et seq. 1977 Op. Att’y Gen. No. 77-77.

RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 41. **C.J.S.** — 14A C.J.S., Colleges and Universities, § 6 et seq.

20-3-62. Use of proceeds from conveyances.

The proceeds arising from any sale or lease of property under Code Section 20-3-60 shall be used for the support of the university system and its branches or for the payment of any debts thereof as the board of regents may determine. (Ga. L. 1935, p. 168, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

**Sections consistent with budgetary provisions.** — Ga. L. 1935, p. 168, §§ 1 through 3, which authorize the regents to sell excess property and to retain the proceeds, have been ruled to be consistent with the Budget Act, Ga. L. 1962, p. 17, § 1 et seq. 1977 Op. Att’y Gen. No. 77-77.

**Unusable property may be disposed of by regents.** — Property held by the regents may be sold, leased, or otherwise disposed of by the regents, subject to the approval of the Governor, whenever the regents may deem such sale, lease, or other disposition to be in the best interests of the university system, provided

that the regents shall first determine that the property can no longer be advantageously used in the university system. 1963-65 Op. Att’y Gen. p. 40.

**Practice of maintaining proceeds authorized by section.** — Practice followed by the regents of maintaining the proceeds from the sale of surplus personal property is authorized. 1972 Op. Att’y Gen. No. 72-73.

**Proceeds of sale of property by the regents are used for support of system and branches.** 1962 Op. Att’y Gen. p. 590.

RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 41. **C.J.S.** — 14A C.J.S., Colleges and Universities, § 6 et seq.

20-3-63. Refunding state obligations held by regents — Authority to issue bonds.

The Governor and the Office of the State Treasurer are authorized and directed to issue to the board of regents the state’s obligation in the form of nonnegotiable bonds to become due 50 years from the date of



issue and bearing interest at the rate of 4 1/4 percent per annum payable semiannually on January 1 and July 1 of each year in redemption of obligations of the state as provided in Code Section 20-3-64. (Ga. L. 1898, p. 68, § 1; Civil Code 1910, § 1395; Ga. L. 1931, p. 7, § 48; Code 1933, § 32-134; Ga. L. 1935, p. 170, § 1; Ga. L. 1972, p. 1015, § 408B; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

**The 2010 amendment**, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fis-

cal Services" near the beginning of this Code section.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 110.

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 6 et seq.

### **20-3-64. Issuing state bonds to redeem obligations of university system — Option of regents; compliance with constitutional sinking fund provisions.**

For the redemption of any valid matured bond of this state presented as the property of the university system, bonds may be issued at the option of the board of regents as provided in Code Section 20-3-63; provided, however, that this Code section shall not be operative in any year until the constitutional sinking fund redemptions have been made for that year. (Ga. L. 1935, p. 170, § 4.)

**Cross references.** — Sinking fund for debt service, Ga. Const. 1983, Art. VII, Sec. IV, Para. III.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 110.

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 6 et seq.

### **20-3-65. No exclusion from University of Georgia for religious beliefs.**

No person of any religious denomination shall be excluded from equal advantages of education and the immunities of the University of Georgia on account of his religious beliefs. (Orig. Code 1863, § 1127; Code 1868, § 1208; Code 1873, § 1203; Ga. L. 1877, p. 17, § 1; Code 1882, § 1203; Civil Code 1895, § 1292; Civil Code 1910, § 1388; Code 1933, § 32-122.)

**Cross references.** — Freedom of conscience, Ga. Const. 1983, Art. I, Sec. I, Para. III. Freedom of religion, U.S. Const., amend. I and Ga. Const. 1983, Art. I, Sec. I, Para. IV.

### RESEARCH REFERENCES

**C.J.S.** — 14A C.J.S., Colleges and Universities, §§ 30, 36.

## 20-3-66. Determination of in-state resident status of students for tuition or fees.

(a) As used in this Code section, the term:

(1) “Dependent student” means an individual under the age of 24 who receives financial support from a parent or United States court appointed legal guardian.

(2) “Emancipated” means a minor who, under certain circumstances, may be treated by the law as an adult. A student reaching the age of 18 shall not qualify for consideration of reclassification by virtue of having become emancipated unless he or she can demonstrate financial independence and domicile independent of his or her parents.

(3) “Independent student” means an individual who is not claimed as a dependent on the federal or state income tax returns of a parent or United States court appointed legal guardian and whose parent or guardian has ceased to provide support and right to that individual’s care, custody, and earnings.

(b)(1) An independent student who has established and maintained a domicile in the State of Georgia for a period of at least 12 consecutive months immediately preceding the first day of classes for the term shall be classified as in-state for tuition purposes. No student shall gain or acquire in-state classification while attending any postsecondary educational institution in this state without clear evidence of having established domicile in Georgia for purposes other than attending a postsecondary educational institution in this state.

(2) If an independent student classified as in-state for tuition purposes relocates out of state temporarily but returns to the State of Georgia within 12 months of the relocation, such student shall be entitled to retain his or her in-state tuition classification.

(c)(1) A dependent student shall be classified as in-state for tuition purposes if such dependent student’s parent has established and maintained domicile in the State of Georgia for at least 12 consecutive months immediately preceding the first day of classes for the term and:

(A) The student has graduated from a Georgia high school; or

(B) The parent claimed the student as a dependent on the parent's most recent federal or state income tax return.

(2) A dependent student shall be classified as in-state for tuition purposes if such student's United States court appointed legal guardian has established and maintained domicile in the State of Georgia for at least 12 consecutive months immediately preceding the first day of classes for the term, provided that such appointment was not made to avoid payment of out-of-state tuition, and such guardian can provide clear evidence of having established and maintained domicile in the State of Georgia for a period of at least 12 consecutive months immediately preceding the first day of classes for the term.

(3) If the parent or United States court appointed legal guardian of a dependent student currently classified as in-state for tuition purposes establishes domicile outside of the State of Georgia after having established and maintained domicile in the State of Georgia, such student may retain his or her in-state tuition classification so long as such student remains continuously enrolled in a public postsecondary educational institution in this state, regardless of the domicile of such student's parent or United States court appointed legal guardian.

(d) Noncitizen students shall not be classified as in-state for tuition purposes unless the student is legally in this state and there is evidence to warrant consideration of in-state classification as determined by the board of regents. Lawful permanent residents, refugees, asylees, or other eligible noncitizens as defined by federal Title IV regulations may be extended the same consideration as citizens of the United States in determining whether they qualify for in-state classification. International students who reside in the United States under nonimmigrant status conditioned at least in part upon intent not to abandon a foreign domicile shall not be eligible for in-state classification. (Ga. L. 1972, p. 193, § 8; Ga. L. 2008, p. 759, § 1/SB 492.)

**Cross references.** — Rights of citizens of other states while in Georgia generally, § 1-2-9. Resident status of persons in state for purpose of attending school, § 39-1-1.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 23.

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 33.

**ALR.** — Determination of residence or

nonresidence for purpose of fixing tuition fees or the like in public school or college, 83 ALR2d 497; 56 ALR3d 641.

Validity and application of provisions governing determination of residency for



purpose of fixing fee differential for out-of-state students in public college, 56 ALR3d 641.

**20-3-67. Powers of regents over system and institutions over students not limited by lowering age of majority.**

Nothing in Code Section 20-3-66 and in Code Section 39-1-1 lowering the age of legal majority shall be construed to limit the power of the board of regents to adopt and enforce rules and regulations for the government, control, and management of the university system nor shall such Code sections be construed so as to limit the authority of any institution in the system to adopt and to enforce rules or regulations governing housing, conduct, discipline, and other related activities of the student body. (Ga. L. 1972, p. 193, § 9.)

**RESEARCH REFERENCES**

**ALR.** — Validity of regulation of college of student to receive visitors in dormitory, or university denying or restricting right 78 ALR3d 1109.

**20-3-68. Instruction in essentials of United States and Georgia history and Constitutions.**

All colleges and universities sustained or in any manner supported by public funds shall give instruction in the history of the United States and the history of Georgia and in the essentials of the United States Constitution and the Constitution of Georgia; and no undergraduate student in any college or university shall receive a certificate of graduation or a degree without successfully completing course work or previously passing a satisfactory examination on the same. (Code 1933, § 32-171, enacted by Ga. L. 1975, p. 1140, § 1.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 4. **C.J.S.** — 14A C.J.S., Colleges and Universities, § 42.

**20-3-69. Chancellor of system may appear before General Assembly.**

Reserved. Repealed by Ga. L. 1984, p. 657, § 1, effective July 1, 1984.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2009, the designation of this Code section was reserved. **Editor’s notes.** — This Code section was based on Orig. Code 1863, § 1129; Code 1868, § 1210; Code 1873, § 1205; Code 1882, § 1205; Civil Code 1895, § 1294; Civil Code 1910, § 1390; Code 1933, § 32-130.

**20-3-70. Power of Governor to close schools and institutions under control of regents.**

Reserved. Repealed by Ga. L. 2005, p. 318, § 1/HB 25, effective July 1, 2005.

**Editor's notes.** — This section was based on Ga. L. 1959, p. 18, § 1.

**20-3-71. Nuclear facility liability insurance for schools under regents.**

The board of regents is authorized to secure liability insurance covering the operation of any nuclear facility established at any school under the control of the board. Such liability insurance shall cover all teachers, instructors, employees, and any other person, firm, or corporation performing services incident to the nuclear facility above mentioned. Any such insurance shall contain a provision that the sovereign immunity of the board shall not be asserted as a defense by the insurer without the specific prior approval of the board. The insurance may be in any amount deemed proper by the board but shall not exceed the sum of \$250,000.00. (Ga. L. 1960, p. 1027, § 1; Ga. L. 1992, p. 6, § 20.)

**OPINIONS OF THE ATTORNEY GENERAL**

**Powers delegated to regents do not include** by clear implication power to waive sovereign immunity by the contractual assumption of tort liability. 1965-66 Op. Att'y Gen. No. 66-261.

**RESEARCH REFERENCES**

**ALR.** — Tort liability for nonmedical radiological harm, 73 ALR4th 582.

**20-3-72. Arrest powers of campus policemen and security personnel.**

The campus policemen and other security personnel of the university system who are regular employees of the system shall have the power to make arrests for offenses committed upon any property under the jurisdiction of the board of regents and for offenses committed upon any public or private property within 500 yards of any property under the jurisdiction of the board. (Ga. L. 1966, p. 370, § 1; Ga. L. 1974, p. 611, § 1.)

**Cross references.** — Campus police generally, T. 20, C. 8.

## JUDICIAL DECISIONS

**Search warrant jurisdiction.** — Duly certified campus police officer has the authority to obtain a warrant to search property beyond the territorial limitation on the officer's power to make an arrest. *State v. Harber*, 198 Ga. App. 170, 401 S.E.2d 57 (1990), cert. denied, 198 Ga. App. 897, 401 S.E.2d 43 (1991).

**Within jurisdictional limits.** — Trial court was permitted to conclude from the

university police officer's testimony that the intersection, where the accident occurred that the university officer investigated, bordered the campus and that the investigation occurred within 500 yards of the campus as required by O.C.G.A. § 20-3-72. *Hawkins v. State*, 281 Ga. App. 852, 637 S.E.2d 422 (2006).

Cited in *State v. Harber*, 198 Ga. App. 170, 401 S.E.2d 57 (1990).

## OPINIONS OF THE ATTORNEY GENERAL

**Board determines police agency which investigates crimes.** — Determination as to the police agency which is to investigate the commission of crimes on campus is a matter of administrative discretion given to the board of regents. 1970 Op. Att'y Gen. No. 70-69.

**Campus security personnel considered law enforcement officers.** — Campus security personnel, being charged with enforcing the laws of this state to the extent the laws are violated on university property, should certainly be considered law enforcement officers, and the board of regents, as the agency responsible for the security personnel, is pro tanto a law enforcement agency. 1973 Op. Att'y Gen. No. 73-23.

**Training and drug testing requirements.** — Campus police and other security personnel of university system institutions vested with the power to make arrests under O.C.G.A. § 20-3-72 are subject to the mandatory training requirements of the Georgia Peace Officer Standards and Training Act, O.C.G.A. § 35-8-1 et seq., and are consequently covered by the random drug testing provisions of O.C.G.A. § 45-20-90 et seq. 1990 Op. Att'y Gen. No. 90-11.

**Enforcement of municipal ordinances.** — University system law enforcement officers may enforce municipal ordinances of all kinds within 500 yards of board of regents' property and may prosecute those cases in any court of this state; however, such officers are not entitled to the statutory witness stipend provided under O.C.G.A. § 24-10-27(a). 1993 Op. Att'y Gen. No. 93-20.

**Municipality's consent not required for extending jurisdiction over nearby property.** — This section does not require municipality consent for the extension of university system police jurisdiction to cover offenses committed upon public or private property within 500 yards of university system property. 1974 Op. Att'y Gen. No. 74-65 (see O.C.G.A. § 20-3-72).

**There is no legal prohibition against campus police aiding other police jurisdictions upon request;** if such assistance is given, the campus police would be acting as agents of the jurisdiction requesting the assistance and the other jurisdiction would be responsible for their actions. 1967 Op. Att'y Gen. No. 67-327.

**Flashing or revolving blue lights can be operated** on motor vehicles belonging to campus police and security departments of the University System of Georgia; however, these vehicles must belong to the board of regents. 1973 Op. Att'y Gen. No. 73-23.

**Campus police and security personnel are authorized to intervene** in demonstrations conducted on campuses when the activities of the demonstrators constitute offenses against the criminal laws. 1970 Op. Att'y Gen. No. 70-69.

**Individuals who have arrest powers may conduct searches.** — Individuals who have arrest powers on premises under jurisdiction of the board may conduct searches pursuant to Ga. L. 1966, p. 567, § 1 et seq. 1969 Op. Att'y Gen. No. 69-172.

**Police officer may search person of arrestee and area within person's im-**



**mediate control.** — In conducting a search without a warrant pursuant to a lawful arrest, the campus police officer may search the person of, and area within the immediate control of, any person over whom the officer has the authority to effect a lawful arrest. 1970 Op. Att'y Gen. No. 70-69.

**Unauthorized dormitory searches.** — College may not rely absolutely on a contractual provision in a dormitory contract to conduct a search of a student's dormitory room in the absence of a valid warrant or consent. 1994 Op. Att'y Gen. No. 94-13.

### RESEARCH REFERENCES

**ALR.** — Search conducted by school official or teacher as violation of fourth amendment or equivalent state constitutional provision, 31 ALR5th 229.

### 20-3-73. Director of agricultural matters.

(a) The board of regents may add to its permanent staff the position of director of agricultural matters, such director to be selected by the board from a recommendation by the chancellor of the university system, the president of the Abraham Baldwin Agricultural College, the dean and coordinator of the College of Agricultural and Environmental Sciences of the University of Georgia, the dean of the Forestry School of the University of Georgia, and the dean of the College of Veterinary Medicine of the University of Georgia.

(b) When so selected, the director shall be responsible to the board for planning, supervising, and coordinating all matters related to agriculture in every unit of the university system.

(c) When the director is so selected, the board shall require every unit of the system having agricultural activity under its control to cause the proper and responsible officials in charge of any agricultural activity in each such unit, including, but not limited to, the teaching of agriculture, research in agriculture, and the agricultural extension forces, to report directly to the director in the formation of its program and its budget therefor before submitting the budget through channels to the board. It is the expressed wish of the General Assembly that when the agricultural program and budget are agreed upon, the budget should then not be changed at the unit level without the approval of the director. It is further the wish of the General Assembly that waste, overlapping, and duplicated efforts in the activities of all units having agricultural programs in the system be avoided wherever possible.

(d) When so selected, the director shall be required by the board to work actively with all departments of the state and federal governments in an effort to secure for the farm family of this state the best possible long-range farm program.

(e) When so selected, the director shall be required to work with proper and certified representatives of every agricultural enterprise in

the state to make certain that every activity of any unit of the system actively serve the best interest of the state's whole agricultural enterprise. (Ga. L. 1960, p. 1084; Ga. L. 1995, p. 10, § 20.)

### **20-3-73.1. Georgia Agrirama designated as State Museum of Agriculture.**

The Georgia Agrirama is designated and shall be recognized as the State Museum of Agriculture. (Code 1981, § 12-3-651, enacted by Ga. L. 2001, p. 894, § 2; Ga. L. 2010, p. 135, § 1/HB 1090; Code 1981, § 20-3-73.1, as redesignated by Ga. L. 2011, p. 752, § 12/HB 142.)

**The 2011 amendment**, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, redesignated former Code Section 12-3-651 as present Code Section 20-3-73.1, deleted former subsections (a) through (c), which read: "(a) There is created a body corporate and politic, to be known as the Georgia Agrirama Development Authority, which shall be deemed an instrumentality of the State of Georgia and a public corporation. By that name, style, and title, such body may contract and be contracted with, sue

and be sued, implead and be impleaded, and complain and defend in all courts.

"(b) The authority may delegate to one or more of its members or to its agents and employees such powers and duties as it may deem proper.

"(c) The authority shall exist through June 30, 2010."; and deleted the subsection (d) designation.

**Law reviews.** — For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010).

### **20-3-73.2. Continuation of authority; governance of museum; transfer of assets.**

(a) After June 30, 2010, the Board of Regents of the University System of Georgia shall be the successor to and a continuation of the former Georgia Agrirama Development Authority provided under former provisions of Article 11 of Chapter 3 of Title 12 as such existed on June 30, 2010, and shall continue the mission of the former authority.

(b) The change of the governance of the State Museum of Agriculture and its continuation, as provided in this Code section, shall in no way affect any existing obligations, liabilities, or rights of the authority as such existed on June 30, 2010. All such obligations, liabilities, and rights are transferred to, vested in, and assumed by the Board of Regents of the University System of Georgia. All existing contracts and agreements between any party and the authority shall not be affected by this Code section but shall continue in full force and effect, without interruption, as contracts or agreements of the Board of Regents of the University System of Georgia.

(c) All right, title, interest, and ownership of all assets, including all real estate, of the authority are transferred to and vested in the Board of Regents of the University System of Georgia. (Code 1981, § 12-3-662,



enacted by Ga. L. 2010, p. 135, § 2/HB 1090; Code 1981, § 20-3-73.2, as redesignated by Ga. L. 2011, p. 752, § 12/HB 142.)

**Effective date.** — This Code section became effective May 20, 2010.

**The 2011 amendment,** effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, redesignated former Code Section 12-3-662 as present Code Section 20-3-73.2, and substituted “the former Georgia Agrirama Development Authority provided under former

provisions of Article 11 of Chapter 3 of Title 12 as such existed on June 30, 2010, and shall continue the mission of the former authority” for “the authority and shall continue the mission of the authority” at the end of subsection (a).

**Law reviews.** — For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010).

### **20-3-73.3. Georgia Southern University Herty Advanced Materials Development Center; advisory board.**

(a) The General Assembly, in recognition of the outstanding and patriotic services and accomplishments of a native Georgian, the Honorable Dr. Charles H. Herty, in the pulp and paper experimental work which he conducted at Savannah, and desirous not only of continuing this great work but of broadening this work, does by this Code section register its enthusiastic appreciation of the services of Dr. Herty and the benefits of the experiments which he made.

(b) The Georgia Southern University Herty Advanced Materials Development Center, created by Act of the General Assembly and formerly known successively as the Herty Foundation and the Herty Advanced Materials Development Center, is hereby continued to conduct research, development, and commercialization with respect to natural and synthetic organic and inorganic materials of all types; to accelerate the commercial availability of newly developed or discovered systems or processes using these materials; and to produce and manufacture for others goods and products using natural or synthetic materials of all types that serve to enhance the economy of the State of Georgia. The Georgia Southern University Herty Advanced Materials Development Center shall be governed as provided by this Code section.

(c) The board of trustees of the former Herty Advanced Materials Development Center provided under former provisions of Part 5 of Article 1 of Chapter 6 of Title 12, as such existed on June 30, 2012, shall be abolished as of July 1, 2012. On and after July 1, 2012, the Board of Regents of the University System of Georgia shall be the successor to and a continuation of the former board of trustees of the center and shall continue the mission of the center.

(d) The change of the name and governance of the center and its continuation, as provided in this Code section, shall in no way affect any existing obligations, liabilities, or rights of the center or the trustees thereof acting in their official capacities, as such existed on June 30,



2012. All such obligations, liabilities, and rights are transferred to, vested in, and assumed by the board of regents. All existing contracts and agreements between any party and the center or the trustees thereof acting in their official capacities shall not be affected by this Code section but shall continue in full force and effect, without interruption, as contracts or agreements of the board of regents.

(e) All right, title, interest, and ownership of all assets, including all real estate, of the center and the trustees thereof acting in their official capacities are transferred to and vested in the board of regents.

(f) There shall be an advisory board for the center, to consist of three persons appointed by the Governor and two persons appointed by the president of Georgia Southern University. Each member of the board shall serve at the pleasure of the appointing authority. Members of the board shall serve without compensation. The purpose of the board shall be to offer advice regarding the operations of the center to the board of regents or its designee. (Ga. L. 1937-38, Ex. Sess., p. 191, §§ 1, 2, 3; Ga. L. 1972, p. 1015, § 1526; Ga. L. 1978, p. 2055, § 1; Code 1981, §§ 12-6-130, 12-6-131; Ga. L. 1986, p. 362, § 1; Ga. L. 2006, p. 304, § 1/HB 1184; Code 1981, § 20-3-73.3, as redesignated by Ga. L. 2012, p. 375, § 1/SB 396.)

**The 2012 amendment**, effective July 1, 2012, rewrote and redesignated former Code Sections 12-6-130 and 12-6-131 as present Code Section 20-3-73.3.

**Cross references.** — Effect of assignment for administrative purposes, § 50-4-3.

OPINIONS OF THE ATTORNEY GENERAL

**Herty Foundation (now Herty Advanced Materials Development Center)** is a public corporation, created for performing a governmental function, and

whose financial affairs are to be subject to inspection by the State Auditor. 1954-56 Op. Att’y Gen. p. 347.

**20-3-74. Advisory board of College of Veterinary Medicine — Creation; officers; meetings.**

(a) There is created the advisory board of the College of Veterinary Medicine of the University of Georgia, which shall consist of eight members as follows: the president of the Georgia Cattlemen’s Association, Inc., or his designee, the president of the Georgia Pork Producers Association, Inc., or his designee, the president of the Georgia Milk Producers Association, Inc., or his designee, the president of the Georgia Poultry Federation or his designee, the president of the Georgia Veterinary Medical Association or his designee, the immediate past president of the Georgia Veterinary Medical Association or his designee, the chairman of the Equine Advisory Board or his designee,

and the assistant commissioner of agriculture for animal industry or his designee.

(b) The advisory board shall elect a chairman and vice-chairman from its own membership and may elect, from its own membership, such other officers as it deems necessary or appropriate. The chairman or, in his absence, the vice-chairman shall preside at meetings of the advisory board. Three members of the advisory board shall constitute a quorum for the transaction of business.

(c) The advisory board shall meet on the call of the chairman or on the petition of at least three members, in writing, to the chairman. The advisory board shall meet at the college but may hold meetings at other locations in the state in the discretion of the advisory board. The advisory board shall meet at least twice each year. (Ga. L. 1975, p. 210, § 1; Ga. L. 1976, p. 753, § 1.)

**20-3-75. Advisory board of the College of Veterinary Medicine — Duties; cooperation of college personnel.**

The advisory board shall act in an advisory capacity to the admissions board of the College of Veterinary Medicine, but not on the acceptance of an individual applicant, and to the dean and department heads of the college relative to the curriculum, courses of instruction, and other policies of the college relative to the supply of an adequate number of practitioners of veterinary medicine in this state. The dean of the College of Veterinary Medicine and the various department heads, instructors, and other personnel of the college shall cooperate with the advisory board and lend whatever assistance shall be necessary to carry out Code Sections 20-3-74 and 20-3-76 and this Code section. (Ga. L. 1975, p. 210, § 2.)

**20-3-76. Advisory board of the College of Veterinary Medicine — Reports to General Assembly.**

From time to time, the advisory board shall report its findings and recommendations to the General Assembly through the standing committees of the House and Senate on the university system. (Ga. L. 1975, p. 210, § 3.)

**20-3-77. Coordination of education encouraging development of small business.**

The board of regents is established as the coordinating agency of educational activities of the university system, utilizing the designation of the University of Georgia's College of Business Administration as a university business development center, directed toward encouraging

the development and expansion of the small business sector of the economy of this state. (Ga. L. 1977, p. 920.)

**20-3-77.1. Training programs for professors and instructors in computers and advanced electronic instructional technology; implementation; funding.**

The board of regents shall prescribe criteria, policies, and standards deemed necessary for the effective implementation of programs within the university system financed wholly or partially from appropriations from the Lottery for Education Account and established for the purpose of providing professors and instructors the necessary training in the use and application of computers and advanced electronic instructional technology to implement interactive learning environments in the classroom and to access the state-wide distance learning network. Such programs shall include the expenditure of funds to defray the costs associated with repairing and maintaining advanced electronic instructional technology. (Code 1981, § 20-3-77.1, enacted by Ga. L. 1996, p. 1603, § 7.)

**20-3-78. Athletic associations — Corporate nature.**

The athletic associations of the University of Georgia and the Georgia Institute of Technology and the athletic associations of any other branch of the university system are corporations, incorporated under charter by the superior court of the county in which each association is located or as otherwise incorporated pursuant to the laws of this state. (Ga. L. 1949, p. 29, § 1; Ga. L. 1968, p. 1377, § 1.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, §§ 1, 3.

**C.J.S.** — 14A C.J.S., Colleges and Universities, §§ 45 et seq., 49 et seq.

**20-3-79. Athletic associations — Not subject to limitations on state agencies; financial operation regulations; state audits not required; exception of appropriations.**

(a) The athletic associations named in Code Section 20-3-78 are not agencies of the state and are not subject to the limitations, restrictions, and laws of general application imposed on state agencies by the Constitution of Georgia and the laws enacted by the General Assembly in compliance with the Constitution. The associations are authorized under their corporate charters issued by the superior courts or as otherwise incorporated pursuant to the laws of this state to make such rules and regulations for the financial operations of the associations as they deem necessary.



(b) The state auditor is not required to make an audit of the accounts of the athletic associations as is required of him in connection with the financial operations of state agencies.

(c) This Code section shall not apply to any tax money appropriated by the state. (Ga. L. 1949, p. 29, §§ 2, 3, 5.)

### JUDICIAL DECISIONS

**Financial records of University of Georgia Athletic Association are public records.** — Because the president of the University of Georgia is charged with controlling the intercollegiate sports program at the university and because the maintenance of documents relating to the assets, liabilities, income, and expenses of the intercollegiate sports program is an integral part thereof, regardless of whether the documents are prepared by employees of a private athletic association

or by the president as treasurer of that association, it is clear that they are documents, papers, and records prepared and maintained in the course of the operation of a public office, and are therefore “public records” under the Open Records Act, O.C.G.A. § 50-18-70 et seq. *Macon Tel. Publishing Co. v. Board of Regents*, 256 Ga. 443, 350 S.E.2d 23 (1986).

**Cited** in *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 87 S. Ct. 1975, 18 L. Ed. 2d 1094 (1967).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, §§ 1, 3.

**C.J.S.** — 14A C.J.S., Colleges and Universities, §§ 45 et seq., 49 et seq.

## 20-3-80. Athletic associations — Agreements as to use of state property.

As the athletic associations are authorized to operate as separate corporations and not as a part of the state or board of regents, a state agency, the board of regents, is authorized and directed to make the necessary agreements for the use by the associations of any property, equipment, or facilities belonging to the state or the board and to fix the amount of compensation to be charged for their use. (Ga. L. 1949, p. 29, § 4.)

### JUDICIAL DECISIONS

**Cited** in *Board of Regents v. Atlanta Journal*, 259 Ga. 214, 378 S.E.2d 305 (1989).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 41.

**C.J.S.** — 14A C.J.S., Colleges and Universities, §§ 45 et seq., 49 et seq.

**20-3-81. Charging more than price on face of athletic contest ticket.**

Reserved. Repealed by Ga. L. 1983, p. 1468, § 2, effective July 1, 1983.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2009, the designation of this Code section was reserved.

**Editor's notes.** — This Code section was based on Ga. L. 1943, p. 623, §§ 1, 3.

**20-3-82. Georgia Eminent Scholars Endowment Trust Fund.**

(a) There is created the Georgia Eminent Scholars Endowment Trust Fund. The board of regents shall serve as trustees of such fund. The fund shall be a budget unit for the purpose of appropriations of state funds as provided for in Part 1 of Article 4 of Chapter 12 of Title 45.

(b) The fund created by this Code section is established for the purpose of providing challenge grants to raise funds to be used by units of the University System of Georgia and foundations established to further the work of such units in endowing chairs to attract eminent scholars to join the faculties of units of the University System of Georgia.

(c) The General Assembly is authorized to appropriate state funds, by line item appropriation, to the trust fund established by this Code section. The board of regents is authorized to allocate any funds appropriated or available to the University System of Georgia to the trust fund created by this Code section. Any moneys so appropriated or allocated are deemed to be contractually obligated for the purposes specified in this Code section and any funds remaining in the trust fund at the end of any fiscal year shall not lapse.

(d) The trustees of the Georgia Eminent Scholars Endowment Trust Fund are authorized to make challenge grants to foundations established to further the work of the units of the University System of Georgia. The trustees of the Georgia Eminent Scholars Endowment Trust Fund shall adopt rules, regulations, and standards relative to the award of challenge grants under this Code section. Such rules, regulations, and standards shall include formulas for the awarding of such grants, provided that such formulas shall require foundations to contribute as much as possible but not less than 50 percent and not more than 75 percent of the total amount deemed necessary by the trustees to endow a chair. Such formulas may be revised at any time by the board of trustees so as to maximize the benefits which may result from endowing one or more chairs in any fiscal year and depending on the total funds available to the Georgia Eminent Scholars Endowment Trust Fund. No funds shall be granted to a foundation under this Code section except upon the express written condition that such funds and

the earnings thereon be used by the foundation for the purpose of endowing a chair at a unit of the University System of Georgia. Such chairs shall be created by the board of regents after considering the existing programs of the system, the necessity for such a chair, and any duplication which the creation of the chair might cause. The amount of funds granted to a foundation under this Code section and the funds raised by the foundation shall be invested and maintained by the foundation and, together with the income therefrom, shall be used as provided in this Code section.

(e) Persons selected to hold such chairs shall be selected under such procedure as may be established by the president of the unit of the University System of Georgia at which the chair is established. (Code 1981, § 20-3-82, enacted by Ga. L. 1985, p. 1654, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1985, “board of regents” was substituted for “Board of

Regents of the University System of Georgia” in subsections (a) and (c).

### OPINIONS OF THE ATTORNEY GENERAL

**“New” funds required for challenge grants.** — A University System institution is required to raise additional (i.e. “new”) funds in order to obtain a challenge grant under the Georgia Eminent Scholars Endowment Trust Fund. The board of

regents, as “trustee” of the Georgia Eminent Endowment Trust Fund, may make matching grants to either University System institutions or to their affiliated private foundations. 1991 Op. Att’y Gen. No. 91-20.

### 20-3-83. Deductions for contributions or dues to interdisciplinary charitable associations.

(a) Subject to the provisions of this Code section, any institution of the university system is authorized to deduct from the salaries or wages of its employees amounts designated by the employee as contributions or dues to any interdisciplinary charitable association qualified as an organization exempt under Section 501(c)(3) of the United States Internal Revenue Code of 1986 whose regular membership consists exclusively of university, college, and technical institute faculty members if such association has as its objectives to facilitate cooperation among teacher and research scholars for the promotion of the interest of higher education and research and to increase the standards, ideals, and welfare of the academic profession in higher education.

(b) No deduction shall be made under this Code section without the written consent of the employee.

(c) An institution making deductions under this Code section shall be reimbursed by any participating charitable association for the institution’s direct cost of making deductions and remitting the proceeds; and any charitable association desiring to participate in a deduction pro-



gram shall as a condition of participation agree to make such reimbursement.

(d) Deductions under this Code section shall be a privilege for the convenience of employees and no right of action shall accrue to the employee or to any charitable association for errors, omissions, or decisions of any agent of the university system regarding deductions under this Code section.

(e) The board of regents may regulate the conduct of deductions under this Code section in any manner deemed by the board to be necessary or appropriate. (Code 1981, § 20-3-83, enacted by Ga. L. 1988, p. 1068, § 1.)

**20-3-84. Center for Trade and Technology Transfer; board of directors; appointment of members; qualifications; officers; duties; reporting; affiliation.**

Reserved. Repealed by Ga. L. 2008, p. 1015, § 8, effective May 14, 2008.

**Editor's notes.** — This Code section 1999, p. 1219, § 1; Ga. L. 2000, p. 136, was based on Code 1981, § 20-3-84, enacted by Ga. L. 1996, p. 1196, § 1; Ga. L. § 20; Ga. L. 2004, p. 690, § 12.

**20-3-85. Study examining postsecondary text availability in alternative formats.**

The board of regents shall direct a study of the practical problems involved in obtaining and producing textbooks and other instructional materials in alternative formats for students with disabilities. In cooperation with the Technical College System of Georgia, students with disabilities, organizations and advocates for persons with disabilities, publishers, federal and state agencies concerned with opportunities for persons with disabilities, colleges and universities that are not under the direction of the board, university and college presses, counterparts in other states, and other interested persons, the board shall work toward the establishment of a system or clearing-house for sharing postsecondary texts in alternative formats while protecting the intellectual property rights of publishers. The board shall report annually to the Governor and the General Assembly regarding progress toward this goal. (Code 1981, § 20-3-85, enacted by Ga. L. 2002, p. 1041, § 2; Ga. L. 2008, p. 335, § 2/SB 435.)

**Editor's notes.** — Ga. L. 2002, p. 1041, § 1, not codified by the General Assembly, provides that: "colleges and universities in this state have made diligent efforts to accommodate the needs of students with disabilities requiring alternative formats for textbooks and other printed instructional materials used in postsecondary courses of study, but that colleges and universities are confronted with many

practical problems in obtaining or producing these texts in alternative formats. Practical problems in obtaining these texts in alternative formats include the wide variety of texts used in postsecondary courses of study, a lack of bargaining power with publishers of postsecondary textbooks in comparison with publishers of textbooks for elementary and secondary education, and hesitation among postsecondary institutions to share alternative formats because of concern about copyright law. Practical problems in producing

such materials in alternative formats include the labor intensive and technical nature of the work, the frequent need for expertise in the subject matter of the texts, and the expense and time required for production. The General Assembly further finds that students with disabilities, colleges, universities, and publishers would benefit from cooperative development of a system for sharing those texts produced in alternative formats while adequately protecting the intellectual property rights of publishers."

**20-3-86. (Repealed effective June 30, 2013) Nonlapsing revenue of institutions in university system.**

Revenue collected by any or all institutions in the university system from tuition, departmental sales or services, continuing education fees, technology fees, or indirect cost recoveries shall not lapse. The amount of revenue from tuition that shall not lapse under this Code section shall not exceed 3 percent of the tuition collected. This Code section shall stand repealed on June 30, 2013. (Code 1981, § 20-3-86, enacted by Ga. L. 2003, p. 313, § 5; Ga. L. 2006, p. 686, § 2/HB 1294; Ga. L. 2008, p. 884, § 2-1/HB 1183; Ga. L. 2010, p. 576, § 2-1/HB 1128.)

**The 2010 amendment**, effective May 27, 2010, substituted "June 30, 2013" for "June 30, 2010" at the end of the last sentence.

**20-3-87. Requirement to join professional association as a condition of enrollment prohibited.**

No student in a degree program in the university system shall be required to join a professional association as a condition of enrollment in such degree program. (Code 1981, § 20-3-87, enacted by Ga. L. 2005, p. 530, § 1/HB 553.)

**PART 3**

**STUDENT ORGANIZATION RESPONSIBILITY FOR DRUG ABUSE**

**Editor's notes.** — Ga. L. 1991, p. 94, § 20, effective March 14, 1991, redesignated former Part 4, which consisted of Code Sections 20-3-90 through 20-3-96, as present Part 3.

**20-3-90. Short title.**

This part shall be known and may be cited as the "Student Organization Responsibility for Drug Abuse Act." (Code 1981, § 20-3-90, enacted by Ga. L. 1990, p. 2033, § 1.)

**20-3-91. Legislative findings and intent.**

The General Assembly finds that the unlawful abuse and misuse of marijuana, controlled substances, or dangerous drugs constitutes a serious threat to the public health, welfare, and academic achievement of students enrolled in the public colleges and universities of this state. It is declared to be a purpose and goal of this state to encourage and, to the fullest extent possible, require all student organizations, including but not limited to, societies, fraternities, sororities, clubs, and similar groups of students which are affiliated with, recognized by, or using the facilities of those educational institutions or facilities which comprise the University System of Georgia, to encourage and enforce compliance with state law on the part of their members, guests, or others attending or participating in their functions and affairs, social or otherwise, by not permitting the sale, distribution, serving, possession, consumption, or use of such marijuana, controlled substances, or dangerous drugs at such functions and affairs in violation of state law. (Code 1981, § 20-3-91, enacted by Ga. L. 1990, p. 2033, § 1; Ga. L. 1991, p. 94, § 20.)

**20-3-92. Definitions.**

As used in this chapter, the term:

(1) "Controlled substance" means any drug, substance, or immediate precursor included in the definition of controlled substances in paragraph (4) of Code Section 16-13-21.

(2) "Dangerous drug" means any drug defined as such under Code Section 16-13-71.

(3) "Marijuana" shall have the same meaning as such term is defined in paragraph (16) of Code Section 16-13-21.

(4) "Student" means any person who is enrolled as a student in courses for academic credit on a full-time, part-time, temporary, or intermittent basis in any college, university, institution of higher education, or facility which is a unit or member institution of the University System of Georgia.

(5) "Student organization" means any organized group or body of students, social, academic, political, or otherwise, which is affiliated with or primarily composed of students enrolled in any university system institution or facility. The term shall include any and all societies, clubs, fraternities, sororities, academic disciplinary groups, or other student entities which operate on the campus of, or which is recognized as a student organization by, any college, university, or other educational institution or facility of the University System of Georgia.



(6) "University system" refers to that system of colleges, universities, and educational institutions which is governed, managed, controlled, and operated by the Board of Regents of the University System of Georgia, a department and an agency of the executive branch of state government of the State of Georgia under Article VIII, Section IV, Paragraph I of the Constitution. (Code 1981, § 20-3-92, enacted by Ga. L. 1990, p. 2033, § 1.)

**20-3-93. Circumstances requiring withdrawal of student organization recognition.**

Notwithstanding any law to the contrary, any student organization functioning in conjunction with, incidental to, or at any university system institution, which through its officers, agents, or responsible members knowingly permits or authorizes the sale, distribution, serving, possession, consumption, or use of marijuana, a controlled substance, or dangerous drug at any affair, function, or activity of that student organization, social or otherwise, when such sale, distribution, serving, possession, consumption, or use is not in compliance with the laws of this state shall have its recognition as a student organization withdrawn, shall be expelled from campus for a minimum of a calendar year from the year of determination of guilt, and shall be prohibited from the use of all property and facilities of the university system institution with which it is affiliated or at which it operates, with any and all leasing, possession, or use agreements respecting the student organization's use of institutional property to be terminated by operation of law for any such knowing, permission, or authorization of the unlawful actions defined in this Code section, subject to the administrative review and hearing procedures set forth in this Code section. (Code 1981, § 20-3-93, enacted by Ga. L. 1990, p. 2033, § 1.)

**20-3-94. Implementation of administrative procedures.**

Administrative procedures for the implementation of this article shall be promulgated for the educational institutions under management and control by the Board of Regents of the University System of Georgia. Such procedures shall include those elements of due process of law required by the Constitution of the State of Georgia and the United States Constitution. (Code 1981, § 20-3-94, enacted by Ga. L. 1990, p. 2033, § 1.)

**20-3-95. Appeal to Board of Regents of University System of Georgia.**

A student organization may appeal any adverse institutional level action by the president or his delegate to the Board of Regents of the

University System of Georgia in accordance with applicable portions of the bylaws of the board of regents, or, pursuant to such other discretionary or mandatory review procedures as the board may in the future make available. An appeal by a student organization to the board of regents shall not defer the effective date of the adverse action against it pending the board's review unless the board so directs. Any such stay of suspension or expulsion by direction of the board of regents shall expire as of the date of the board's final decision on the matter. (Code 1981, § 20-3-95, enacted by Ga. L. 1990, p. 2033, § 1.)

**20-3-96. Final appeal to superior court.**

Any student organization which is adversely affected by a decision or action under this part may appeal a final decision of the Board of Regents of the University System of Georgia to the superior court of the county wherein the university system institution is situated, or to the Superior Court of Fulton County, within 20 days after the student organization has been either personally served or mailed a copy of the board of regents' final decision. If the decision is mailed, the time for appeal shall begin on the date mailed; however, an extra three days shall be added to the time for appeal. If there is any evidence in the record to support the decision of the board of regents with regard to the administrative findings of fact, those findings must be upheld by the superior court. Except as provided in this part, appeals to the superior court shall be governed by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," as amended. (Code 1981, § 20-3-96, enacted by Ga. L. 1990, p. 2033, § 1; Ga. L. 1991, p. 94, § 20.)

ARTICLE 3

REGULATION OF PRIVATE DEGREE-GRANTING INSTITUTIONS

**Editor's notes.** — Ga. L. 1990, p. 1166, § 4 repealed this article; § 6 made the repeal effective July 1, 1991. Ga. L. 1991, p. 687, § 8, effective April 10, 1991, not codified by the General Assembly, re-

pealed Section 6 of Ga. L. 1990, p. 1166. The effect of that repeal was to make the repeal of this article effective April 10, 1991.

**20-3-100 through 20-3-120.**

Reserved. Repealed by Ga. L. 1990, p. 1166, § 4, effective April 10, 1991.

**Editor's notes.** — This article, which consisted of Code Sections 20-3-100 through 20-3-120, regulating private degree-granting institutions, was based on Ga. L. 1978, p. 1571, §§ 1-21; Ga. L.

1981, p. 899, § 1; Ga. L. 1982, p. 3, § 20; Ga. L. 1987, p. 1120, §§ 1-7. For new provisions as to nonprofit, postsecondary educational institutions, see Code Section 20-3-250.1 et seq.

## ARTICLE 4

## JUNIOR COLLEGES

**20-3-130. Short title; name of junior college system.**

This article shall be known as the "Junior College Act of 1958," and the system established by this article shall be known as the "Junior College Program of the State of Georgia." (Ga. L. 1958, p. 47, § 1.)

**Editor's notes.** — By resolution (Ga. L. 1985, p. 598), the General Assembly expressed its approval of the acquisition of DeKalb Junior College by the Board of Regents of the University System of Georgia and the operation of the college as a unit of the University System of Georgia.

## OPINIONS OF THE ATTORNEY GENERAL

**Transfer of college to board of regents.** — General Assembly action is not required for a county school board's transfer of a junior college which the county currently operates under the Junior College Act of 1958 to the board of regents. 1983 Op. Att'y Gen. No. 83-74.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 1.

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 1.

**20-3-131. Definitions.**

As used in this article, the term:

(1) "Junior college" means a community educational institution constructed and operated by a local operating authority which shall offer a course of study extending beyond the high school level providing either preparation for further college or completion of education, or both, provided that an institution which otherwise would fall under this definition shall not be excluded solely because it offers courses below a college level if such courses are strictly remedial in nature.

(2) "Local operating authority" means any city, county, county school system, independent school system, or other political subdivision of the state created for college purposes and possessing the power to tax, which shall possess requisite powers under the Constitution and laws of this state to establish a college, or any combination of two or more of the political subdivisions enumerated in this paragraph which may be authorized under law to utilize the provisions of this article. (Ga. L. 1958, p. 47, § 2; Ga. L. 1983, p. 3, § 53; Ga. L. 1984, p. 22, § 20; Ga. L. 1985, p. 149, § 20; Ga. L. 1986, p. 10, § 20.)



## JUDICIAL DECISIONS

**Cited** in *Sheppard v. DeKalb County Bd. of Educ.*, 220 Ga. 219, 138 S.E.2d 271 (1964).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 1.

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 1.

**ALR.** — Liability of university, college, or other school for failure to protect student from crime, 1 ALR4th 1099.

### 20-3-132. Authority to establish and maintain junior colleges.

Every city, county, county school system, independent school system, or other political subdivision of the state possessing a power to tax, which shall possess the requisite powers under the Constitution and laws of this state may either alone or in combination with any other such city, county, county school system, independent school system, or other political subdivision of the state establish, maintain, and operate one or more junior colleges under the terms of and subject to this article. (Ga. L. 1958, p. 47, § 3; Ga. L. 1983, p. 3, § 53; Ga. L. 1984, p. 22, § 20.)

**Cross references.** — Health insurance coverage for retired former employees of community colleges operated by a local school system, § 20-2-915.

## JUDICIAL DECISIONS

**Cited** in *Sheppard v. DeKalb County Bd. of Educ.*, 220 Ga. 219, 138 S.E.2d 271 (1964).

### 20-3-133. Payments from regents to local operating authorities; local support from fees and taxes; audits.

There shall be paid to every local operating authority which shall have established a junior college under this article, upon which construction had commenced prior to January 1, 1964, and which is not operated as a unit of the university system under the board of regents an amount which shall be determined on the basis of a budget for each fiscal year, developed pursuant to a formula agreed upon by the local operating authority, the director of the Senate Budget Office, the director of the House Budget Office, and the director of the Office of Planning and Budget. Budgets prepared pursuant to this authority shall be for expenses incurred by a junior college for educational and general expenditures as set forth in the latest edition of the publication entitled "College and University Business Administration." Such for-

mula shall include financial participation from the local operating authority to include student matriculation fees and funds derived from not less than a one-half nor more than a three-fourths mill tax established by the local operating authority on the ad valorem tax digest of its political subdivision. No state funds shall be appropriated for capital construction. Expenditure under this article shall be audited annually by the Department of Audits and Accounts. (Ga. L. 1958, p. 47, § 5; Ga. L. 1964, p. 686, §§ 2, 6; Ga. L. 1970, p. 645, § 1; Ga. L. 1972, p. 538, § 1; Ga. L. 1975, p. 522, § 1; Ga. L. 2008, p. VO1, § 1-11/HB 529.)

**Editor's notes.** — Ga. L. 2008, p. VO1, which amended this Code section, was passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

OPINIONS OF THE ATTORNEY GENERAL

**Section provides a state subsidy only to junior colleges** which are operated by governmental subdivisions of the State of Georgia. 1958-59 Op. Att'y Gen. p. 392.

**20-3-134. Regents to fix policies and standards; inspections and supervision; withholding state funds from substandard junior colleges.**

The board of regents shall adopt rules and regulations fixing policies and standards entitling the local operating authority to receive state aid for the support of junior colleges and shall have authority to make such inspections and supervision as shall be necessary to ensure that such policies and standards are met as prescribed by the board. If there has been a failure to comply with such policies and standards by any such junior college, the board shall have authority to withhold or terminate the payment of any state funds which would otherwise be due under the terms of this article. (Ga. L. 1958, p. 47, § 6; Ga. L. 1964, p. 686, § 6.)

RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 5.      **C.J.S.** — 14A C.J.S., Colleges and Universities, § 12 et seq.

**20-3-135. State funds limited to payments by regents.**

The sum provided for in Code Section 20-3-133 shall be the only direct financial contribution which the state shall make toward the establishment, maintenance, and operation of any junior college or colleges

established under the terms of this article. (Ga. L. 1958, p. 47, § 7; Ga. L. 1964, p. 686, §§ 3, 6.)

### **20-3-136. Power to condemn private property for school and educational purposes unaffected.**

Nothing contained in this article shall repeal or amend any of the provisions of Code Sections 20-2-521 and 20-2-522, authorizing county boards of education and certain independent and public school systems to condemn private property for school purposes and for any public educational program which is now or may be hereafter authorized by law. (Ga. L. 1964, p. 686, § 5.)

### **JUDICIAL DECISIONS**

**Cited** in *Sheppard v. DeKalb County Bd. of Educ.*, 220 Ga. 219, 138 S.E.2d 271 (1964).

### **RESEARCH REFERENCES**

**ALR.** — Eminent domain: possibility of overcoming specific obstacles to contemplated use as element in determining existence of necessary public use, 22 ALR4th 840.

## **ARTICLE 5**

### **GEORGIA EDUCATION AUTHORITY (UNIVERSITY)**

**Law reviews.** — For article, "Public Authorities: Legislative Panacea?," see 5 J. Pub. L. 387 (1956).

### **RESEARCH REFERENCES**

**ALR.** — Liability of university, college, or other school for failure to protect student from crime, 1 ALR4th 1099.

### **20-3-150. Short title.**

This article may be cited as the "Georgia Education Authority (University) Act." (Ga. L. 1949, p. 1009, § 1; Ga. L. 1967, p. 869, § 1.)

### **RESEARCH REFERENCES**

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 3.

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 12 et seq.



**20-3-151. Definitions.**

(a) As used in this article, the term:

(1) "Authority" means the Georgia Education Authority (University), which was formerly known as the University System Building Authority. Such change in name of the authority shall in no way affect the identity of the authority or the rights, powers, privileges, or liabilities of the authority or any person under this article.

(2) "Bonds" or "revenue bonds" means any bonds issued by the authority under this article, including refunding bonds.

(3) "Cost of the project" means the cost of construction; the cost of all lands, properties, rights, easements, and franchises acquired; the cost of all machinery and equipment; financing charges; interest prior to and during construction and for one year after completion of construction; cost of engineering; architectural and legal expenses; cost of plans and specifications and other expenses necessary or incident to determining the feasibility or practicability of the project; administrative expense; and such other expenses as may be necessary or incident to the financing authorized in this article; the construction of any project, the placing of it in operation, and the condemnation of property necessary for such construction and operation. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds issued under this article for such project.

(4) "Project" means one or a combination of two or more of the following or any equipment therefor: housing accommodations; buildings and facilities intended for use as classrooms; laboratories; libraries; dormitories; and instructional, administrative, and recreational facilities for students, faculty, officers, and employees of any institution or unit under the control of the board of regents; and all structures, electric, gas, steam, and water utilities, and facilities of every kind and character deemed by the authority necessary or convenient for the efficient operation of any unit which is a part of the university system.

(5) "Unit" means any institution, school, academy, university, or experiment station at any particular location which forms a part of the university system.

(b) Any project or combination of projects shall be deemed "self-liquidating," if, in the judgment of the authority, the revenues, rents, or earnings to be derived by the authority therefrom will be sufficient to pay the cost of maintaining, repairing, and operating the project and to pay the principal and interest of revenue bonds which

may be issued for the cost of such project, projects, or combination of projects. (Ga. L. 1949, p. 1009, § 3; Ga. L. 1964, p. 104, § 1; Ga. L. 1967, p. 869, § 3; Ga. L. 1991, p. 1577, § 1.)

**Code Commission notes.** — Pursuant “self-liquidating” was substituted for to Code Section 28-9-5, in 1987, “self-liquidation” in subsection (b).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 3.

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 12 et seq.

### 20-3-152. Creation; members, officers, and staff; quorum; procedural rules and regulations; assignment to Department of Administrative Services.

(a) There is created a body corporate and politic to be known as the Georgia Education Authority (University), which shall be deemed to be an instrumentality of this state and a public corporation; and by that name, style, and title said body may contract and be contracted with, bring and defend actions, and implead and be impleaded. The authority shall consist of six members, as follows: the Governor, an appointee of the Governor who is not the Attorney General, the state auditor, the chairman of the board of regents, the director of the Office of Planning and Budget, and the chancellor of the university system.

(b) The authority shall elect one of its members as chairman and another as vice-chairman and a secretary and treasurer, who need not necessarily be a member of the authority but who shall be the same as the secretary and treasurer of the Georgia Education Authority (Schools). The majority of the members of the authority shall constitute a quorum. No vacancy on the authority shall impair the right of the quorum to exercise all the rights and perform all the duties of the authority. The members of the authority shall not be entitled to compensation for their services but shall be entitled to and shall be reimbursed for their actual expenses necessarily incurred in the performance of their duties. The staff of the authority shall be the same as the staff of the Georgia Education Authority (Schools). The authority shall make rules and regulations for its own government. It shall have perpetual existence. Any change in name or composition of the authority shall in no way affect the vested rights of any person under the provisions of this article or impair the obligations of any contracts existing under this article.

(c) The authority is assigned to the Department of Administrative Services for administrative purposes only as prescribed in Code Section 50-4-3. (Ga. L. 1949, p. 1009, § 2; Ga. L. 1959, p. 30, § 2; Ga. L. 1959, p. 362, § 1; Ga. L. 1967, p. 869, § 2; Ga. L. 1972, p. 1015, § 414; Ga. L. 1988, p. 426, § 1; Ga. L. 1991, p. 1577, § 2.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 3.

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 12 et seq.

**20-3-153. Powers of the authority.**

The authority shall have powers:

- (1) To have a seal and alter it at pleasure;
- (2) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real and personal property of every kind and character for its corporate purposes;
- (3) To acquire in its own name by purchase, on such terms and conditions, and in such manner as it may deem proper, or by condemnation in accordance with any and all existing laws applicable to the condemnation of property for public use, real property or rights of easements therein or franchises necessary or convenient for its corporate purposes and to use them so long as its corporate existence shall continue and to lease or make contracts with respect to the use of or dispose of them in any manner it deems to the best advantage of the authority, the authority being under no obligation to accept and pay for any property condemned under this article except from the funds provided under the authority of this article; and in any proceedings to condemn, such orders may be made by the court having jurisdiction of the action or proceeding as may be just to the authority and to the owners of the property to be condemned; and no property shall be acquired under this article upon which any lien or other encumbrance exists unless at the time such property is so acquired a sufficient sum of money is deposited in trust to pay and redeem the fair value of such lien or encumbrance; and if the authority shall deem it expedient to construct any project on lands which are a part of the campus, grounds, or other real estate holdings of a member unit of the university system, the Governor is authorized to execute for and on behalf of the state a lease upon such lands to the authority for such parcel or parcels as shall be needed for a period not to exceed 50 years; and if the authority shall deem it expedient to construct any project on any other lands the title to which shall then be in this state, the Governor is authorized to convey, for and in behalf of the state, title to such lands to the authority upon payment into the state treasury for the credit of the sinking fund of the state of the reasonable value of such lands, such value to be determined by three appraisers to be agreed upon by the Governor and the chairman of the authority;
- (4) To appoint and select officers, agents, and employees, including engineering, architectural, and construction experts, fiscal agents, and attorneys, and to fix their compensation;



(5) To make contracts and leases and to execute all instruments necessary or convenient, including contracts for construction of projects and leases of projects or contracts with respect to the use of projects which the authority causes to be erected or acquired; and any and all political subdivisions, departments, institutions, or agencies of the state are authorized to enter into contracts, leases, or agreements with the authority upon such terms and for such purposes as they deem advisable; and without limiting the generality of the above, authority is specifically granted to the board of regents for and on behalf of the units and institutions under its control and to the authority to enter into contracts and lease agreements for the use of any structure, building, or facilities or a combination of any two or more structures, buildings, or facilities of the authority for a term not exceeding 50 years; and the board, for and on behalf of any unit or institution or combination of units or institutions, may obligate itself to pay an agreed sum for the use of such property so leased and also to obligate itself as part of the lease contract to pay the cost of maintaining, repairing, and operating the property so leased from the authority;

(6) To construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage projects, as defined in Code Section 20-3-151, to be located on property owned by or leased by the authority, the cost of any such project to be paid in whole or in part from the proceeds of revenue bonds of the authority or from such proceeds and any grant from the United States or any agency or instrumentality thereof;

(7) To accept loans or grants of money or materials or property of any kind from the United States or any agency or instrumentality thereof upon such terms and conditions as the United States or such agency or instrumentality may impose;

(8) To borrow money for any of its corporate purposes and to issue negotiable revenue bonds payable solely from funds pledged for that purpose and to provide for the payment of such bonds and for the rights of the holders thereof;

(9) To exercise any power usually possessed by private corporations performing similar functions which is not in conflict with the Constitution and laws of this state; and

(10) To do all things necessary or convenient to carry out the powers expressly given in this article. (Ga. L. 1949, p. 1009, § 4.)

#### OPINIONS OF THE ATTORNEY GENERAL

**Board authorized to convey property to authority for housing construction.** — Board of regents has the authority to execute, and the Governor to

approve, a deed conveying property from the board to the authority for the construction of housing for married students. 1962 Op. Att'y Gen. p. 588.

RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 3.      **C.J.S.** — 14A C.J.S., Colleges and Universities, § 12 et seq.

**20-3-154. Authority to issue revenue bonds; terms.**

The authority or any authority or body which has or which may in the future succeed to the powers, duties, and liabilities vested in the authority created by this article shall have power at one time or from time to time to provide by resolution for the issuance of negotiable revenue bonds of the authority for the purpose of paying all or any part of the cost, as defined in this article, of any one project or combination of projects. The principal and interest of such revenue bonds shall be payable solely from the special fund provided in this article for such payment. The bonds of each issue shall be dated; shall bear interest at such rate or rates as may be determined by the authority, payable semiannually; shall mature at such time or times not exceeding 30 years from their date or dates, except that "Georgia Education Authority (University) Student Housing Revenue Bonds" may mature at such time or times not exceeding 40 years from their date or dates; shall be payable in such medium of payment as to both principal and interest as may be determined by the authority; and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority in the resolution providing for the issuance of the bonds. (Ga. L. 1949, p. 1009, § 5; Ga. L. 1951, p. 44, § 1; Ga. L. 1952, p. 116, § 1; Ga. L. 1960, p. 887, § 1; Ga. L. 1962, p. 37, § 1; Ga. L. 1964, p. 310, § 1.)

**Cross references.** — Revenue bonds generally, § 36-82-60 et seq.

RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 110.      **C.J.S.** — 14A C.J.S., Colleges and Universities, §§ 6 et seq., 12 et seq.

**20-3-155. Form of bonds; denominations; place of payment; registration.**

The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company within or outside the state. The bonds may be issued in

coupon or registered form, or both, as the authority may determine; and provision may be made for the registration of any coupon bond as to principal alone and also as to both principal and interest. (Ga. L. 1949, p. 1009, § 6.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 9, 163, 164.      **C.J.S.** — 11 C.J.S., Bonds, § 9.

### 20-3-156. Signing, sealing, and attesting bonds.

In case any officer whose signature shall appear on any bonds or whose facsimile signature shall appear on any coupon shall cease to be such officer before the delivery of such bonds, such signature shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until such delivery. All such bonds shall be signed by the chairman of the authority, and the official seal of the authority shall be affixed thereto and attested by the secretary of the authority; and any coupons attached thereto shall bear the signature or facsimile signature of the chairman of the authority. Any coupon may bear the facsimile signature of such person, and any bond may be signed, sealed, and attested on behalf of the authority by such persons as at the actual time of the execution of such bonds shall be duly authorized or hold the proper office, although at the date of such bonds such persons may not have been so authorized or shall not have held such office. (Ga. L. 1949, p. 1009, § 7.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 169, 170.      **C.J.S.** — 11 C.J.S., Bonds, § 14.

### 20-3-157. Bonds negotiable; exemption of bonds from taxation.

All revenue bonds issued under this article shall have all the qualities and incidents of negotiable instruments under Article 8 of Title 11. Such bonds and the income thereof shall be exempt from all taxation within the state. (Ga. L. 1949, p. 1009, § 8.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 11, 34, 71. Am. Jur. 2d, State and Local Taxation, § 346.      **C.J.S.** — 84 C.J.S., Taxation, § 251.



**20-3-158. Manner of sale and price of bonds; assistance by Georgia Building Authority.**

The authority may sell its bonds in such manner and for such price as it may determine to be for the best interests of the authority. Whenever the authority shall determine to issue its bonds, it shall call upon the Georgia Building Authority to render advice and to perform, as its agent, ministerial services for the authority in connection with the marketing of such bonds. (Ga. L. 1949, p. 1009, § 9; Ga. L. 1960, p. 887, § 2; Ga. L. 1967, p. 869, § 4.)

**20-3-159. Use of bond proceeds; additional bonds.**

The proceeds of revenue bonds issued under this article shall be used solely for the payment of the cost of the project or combined project and shall be disbursed upon requisition or order of the chairman of the authority under such restrictions, if any, as the resolution authorizing the issuance of the bonds or the trust indenture mentioned in Code Section 20-3-164 may provide. If the proceeds of such bonds, by error of calculation or otherwise, shall be less than the cost of the project or combined project, unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust indenture, additional bonds may in like manner be issued to cover the amount of such deficit. Unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust indenture, such additional bonds shall be deemed to be of the same issue and shall be entitled to payment from the same fund, without preference or priority, as the bonds first issued for the same purpose. If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which such bonds are issued, the surplus shall be paid into the fund provided in Code Section 20-3-166 for the payment of principal and interest of such bonds. (Ga. L. 1949, p. 1009, § 10.)

**20-3-160. Issuance of interim receipts or certificates or temporary bonds.**

Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts, interim certificates, or temporary bonds, with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. (Ga. L. 1949, p. 1009, § 11.)

**20-3-161. Replacement of mutilated, destroyed, or lost bonds.**

The authority may also provide for the replacement of any bond which shall become mutilated or be destroyed or lost. (Ga. L. 1949, p. 1009, § 12.)

**20-3-162. Compliance with article sufficient for issuance of bonds; single issue for one or more projects; adoption of bond resolution.**

Revenue bonds may be issued without any other proceedings or the happening or any other conditions or things than those proceedings, conditions, and things which are specified or required by this article. In the discretion of the authority, revenue bonds of a single issue may be issued for the purpose of paying the cost of any one or more, including a combination of, projects at any one institution or any number of institutions. Any resolution providing for the issuance of revenue bonds under this article shall become effective immediately upon its passage and need not be published or posted. Any such resolution may be passed at any regular or special or adjourned meeting of the authority by a majority of its members. (Ga. L. 1949, p. 1009, § 13.)

**20-3-163. Credit of state not pledged.**

Revenue bonds issued under this article shall not be deemed to constitute a debt of the state or a pledge of the faith and credit of the state, but such bonds shall be payable solely from the fund provided for in Code Section 20-3-166; and the issuance of such revenue bonds shall not directly, indirectly, or contingently obligate the state to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment; and all such bonds shall contain recitals on their face covering substantially the foregoing provisions of this Code section; provided, however, such funds as may be received from state appropriations or from any other source are declared to be available and may be used by the board of regents for the performance of any lease contract entered into by the board. (Ga. L. 1949, p. 1009, § 14.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 44.

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 6 et seq.

**20-3-164. Trust indentures to secure bonds; contents of indentures or bond resolutions; expenses of carrying out indentures.**

In the discretion of the authority, any issue of revenue bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state. Such trust indenture may pledge or assign rents, revenues, and earnings to be received by the authority. Either the resolution providing for the issuance of revenue bonds or such trust indenture may contain such

provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition of property; the construction of the project; the maintenance, operation, repair, and insurance of the project; and the custody, safeguarding, and application of all moneys; may also provide that any project shall be constructed and paid for under the supervision and approval of consulting engineers or architects employed or designated by the authority and satisfactory to the original purchasers of the bonds issued therefor; may also require that the security given by contractors and by any depositary of the proceeds of the bonds or revenues or other moneys be satisfactory to such purchasers; and may also contain provisions concerning the conditions, if any, upon which additional revenue bonds may be issued. It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depositary and to furnish such indemnifying bonds or pledge such securities as may be required by the authority. Such indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. In addition to the foregoing, such trust indenture may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the project affected by such indenture. (Ga. L. 1949, p. 1009, § 15.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 178.      **C.J.S.** — 14A C.J.S., Colleges and Universities, § 6 et seq.

#### **20-3-165. Trustee for bond proceeds.**

The authority shall in the resolution providing for the issuance of revenue bonds or in the trust indenture provide for the payment of the proceeds of the sale of the bonds to any officer or person who, or any agency, bank, or trust company which, shall act as trustee of such funds and shall hold and apply them to the purposes of this article, subject to such regulations as this article and such resolution or trust indenture may provide. (Ga. L. 1949, p. 1009, § 16.)

#### **20-3-166. Sinking fund.**

The revenues, rents, and earnings derived from any particular project or combined project or any and all funds from any source received by the board of regents and pledged and allocated by it to the



authority as security for the performance of any lease or leases or any and all revenues, rents, and earnings received by the authority, regardless of whether or not such rents, earnings, and revenues were produced by a particular project for which bonds have been issued, unless otherwise pledged and allocated, may be pledged and allocated by the authority to the payment of the principal and interest on revenue bonds of the authority as the resolution authorizing the issuance of the bonds or the trust instrument may provide; and such funds so pledged from whatever source received, which pledge may include funds received from one or more or all sources, shall be set aside at regular intervals as may be provided in the resolution or trust indenture into a sinking fund which shall be pledged to and charged with the payment of:

- (1) The interest upon such revenue bonds as such interest shall fall due;
- (2) The principal of the bonds as the same shall fall due;
- (3) The necessary charges of paying agents for paying principal and interest; and
- (4) Any premium upon bonds retired by call or purchase as provided in Code Section 20-3-154.

The use and disposition of such sinking funds shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the revenue bonds or in the trust indenture, but, except as may otherwise be provided in such resolution or trust indenture, such sinking fund shall be a fund for the benefit of all revenue bonds without distinction or priority of one over another. Subject to the provisions of the resolution authorizing the issuance of the bonds or in the trust indenture, surplus moneys in the sinking fund may be applied to the purchase or redemption of bonds; and any such bonds so purchased or redeemed shall forthwith be canceled and shall not again be issued. (Ga. L. 1949, p. 1009, § 17.)

RESEARCH REFERENCES

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|---|---|
| <b>Am. Jur. 2d.</b> — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 5, 386. | against impairment of obligations of contract as applied to sinking funds for retirement of municipal or other public bonds, 115 ALR 220. |
| <b>C.J.S.</b> — 14A C.J.S., Colleges and Universities, § 6 et seq.                  |   |
| <b>ALR.</b> — Constitutional provisions   |   |

**20-3-167. Remedies of bondholders, receivers, or indenture trustees.**

Any holder of revenue bonds or interest coupons issued under this article, any receiver for such holders, or indenture trustee, if any, except

to the extent the rights given in this Code section may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may by action, mandamus, or other proceedings protect and enforce any and all rights under the laws of this state or granted under this article or under such resolution or trust indenture and may enforce and compel performance of all duties required by this article or by resolution or trust indenture to be performed by the authority or any officer thereof, including the fixing, charging, and collecting of revenues, rents, and other charges for the use of the project or projects, and, in the event of default of the authority upon the principal and interest obligations of any revenue bond issue, shall be subrogated to each and every right, specifically including the contract rights of collecting rental, which the authority may possess, against the board of regents or other contracting or leasing department, agency, or institution of the state. In the pursuit of his or its remedies as subrogee, such individual, receiver, or trustee may proceed by action, mandamus, or other proceedings to collect any sums by such proceedings due and owing to the authority and pledged or partially pledged directly or indirectly to the benefit of the revenue bond issue of which such individual, receiver, or trustee is representative. No holder of any such bond or receiver or indenture trustee thereof shall have the right to compel any exercise of the taxing power of the state to pay any such bond or the interest thereon or to enforce the payment thereof against any property of the state; nor shall any such bond constitute a charge, lien, or encumbrance, legal or equitable, upon the property of the state; provided, however, any provision of this article or any other Act to the contrary notwithstanding, any such bondholder or receiver or indenture trustee shall have the right by appropriate legal or equitable proceedings, including, without being limited to, mandamus, to enforce compliance by the appropriate public officials with Article VII, Section IV, Paragraph III of the Constitution of Georgia; and permission is given for the institution of any such proceedings to compel the payment of lease obligations. (Ga. L. 1949, p. 1009, § 18; Ga. L. 1964, p. 104, § 2; Ga. L. 1982, p. 3, § 20; Ga. L. 1983, p. 3, § 53.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 250 et seq.      **C.J.S.** — 11 C.J.S., Bonds, § 40.

#### **20-3-168. Refunding bonds.**

The authority is authorized to provide by resolution for the issue of revenue refunding bonds of the authority for the purpose of refunding any revenue bonds issued under this article and then outstanding, together with accrued interest thereon. The issuance of such revenue refunding bonds, the maturities and all other details thereof, the rights

of the holders thereof, and the duties of the authority in respect to such bonds shall be governed by Code Sections 20-3-151 through 20-3-167 insofar as they may be applicable. (Ga. L. 1949, p. 1009, § 19.)

### **20-3-169. Bonds legal investments or security deposits.**

The bonds authorized in this article are made securities in which all public officers and bodies of this state and all municipalities and all municipal subdivisions; all insurance companies and associations and other persons carrying on an insurance business; all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business; all administrators, guardians, executors, trustees, and other fiduciaries; and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state may properly and legally invest funds including capital in their control or belonging to them. The bonds are also made securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of the bonds or other obligations of this state is authorized. (Ga. L. 1949, p. 1009, § 20.)

### **OPINIONS OF THE ATTORNEY GENERAL**

Ga. L. 1845, Cobb, 333, Acts 1860, p. 31, as amended implemented Ga. L. 1949, p. 1009, § 20 (see O.C.G.A. § 20-3-169) in providing legal investments which can be made by trustees. 1971 Op. Att'y Gen. No. 71-20.

### **20-3-170. Tax exemption of authority's property, activities, charges, and bonds.**

The creation of the authority and the carrying out of its corporate purpose is in all respects for the benefit of the people of this state and is a public purpose, and the authority will be performing an essential governmental function in the exercise of the power conferred upon it by this article; and this state covenants with the holders of the bonds that the authority shall be required to pay no taxes or assessments upon any of the property acquired or leased by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation or maintenance of the buildings erected or acquired by it or any fees, rentals, or other charges for the use of such buildings or other income received by the authority, and that the bonds of the authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state. (Ga. L. 1949, p. 1009, § 21.)



## RESEARCH REFERENCES

**Am. Jur. 2d.** — 71 Am. Jur. 2d, State and Local Taxation, § 307.      **C.J.S.** — 84 C.J.S., Taxation, § 208.

**20-3-171. Procedure for validating bonds.**

Bonds of the authority shall be confirmed and validated in accordance with the procedure of Article 3 of Chapter 82 of Title 36. The petition for validation shall also make party defendant to such action any authority, subdivision, instrumentality, or agency of the state which has contracted with the authority for the use of any building, structure, or facilities for which bonds have been issued and sought to be validated; and such other authority, subdivision, instrumentality, or agency shall be required to show cause, if any, why such contract or contracts and the terms and conditions thereof should not be inquired into by the court, the validity of the terms thereof determined, and the contract adjudicated as security for the payment of any such bonds of the authority. The bonds, when validated, and the judgment of validation with respect to such bonds shall be final and conclusive against the authority issuing them and against any other authority, subdivision, instrumentality, or agency contracting with the authority. (Ga. L. 1949, p. 1009, § 23.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 346, 347, 348.      **C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 763, 785.

**20-3-172. Venue and jurisdiction of actions to enforce rights or validate bonds.**

Any action to protect or enforce any rights under this article shall be brought in the Superior Court of Fulton County; and any action pertaining to validation of any bonds issued under this article shall likewise be brought in such court, which shall have exclusive, original jurisdiction of such actions. (Ga. L. 1949, p. 1009, § 22.)

**Law reviews.** — For note discussing problems with venue in Georgia and proposing statutory revisions to improve the resolution of venue questions, see 9 Ga. St. B.J. 254 (1972).

## JUDICIAL DECISIONS

**Cited in** M.A.R.T.A. v. McCain, 135 Ga. App. 460, 218 S.E.2d 122 (1975).

**20-3-173. Interests of bondholders protected.**

While any of the bonds issued by the authority remain outstanding, the power, duties, or existence of the authority or of its officers, employees, or agents or of the board of regents or of any other state agency or department shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such bonds; and no other entity, department, agency, or authority will be created which will compete with the authority to such an extent as to affect adversely the interests and rights of the holders of such bonds; nor will the state itself so compete with the authority. This article shall be for the benefit of the state, the authority, and the holders of any such bonds and, upon the issuance of bonds under this article, shall constitute a contract with the holders of such bonds. (Ga. L. 1949, p. 1009, § 24.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 72.

**20-3-174. Acceptance of grants and contributions from federal and other sources.**

The authority, in addition to the moneys which may be received from the sale of revenue bonds and from the collection of revenues, rents, and earnings derived under this article, shall have authority to accept from any federal agency grants for or in aid of the construction of any project or for the payment of bonds and to receive and accept contributions from any source of either money or property or other things of value to be held, used, and applied only for the purposes for which such grants or contributions may be made. (Ga. L. 1949, p. 1009, § 25.)

**20-3-175. Moneys received deemed trust funds.**

All moneys received pursuant to the authority of this article, whether as proceeds from the sale of revenue bonds; as grants or other contributions; or as revenues, rents, and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this article. (Ga. L. 1949, p. 1009, § 26.)

**20-3-176. Fixing, collecting, and assigning rentals and charges for use of projects.**

(a) The authority is authorized to fix rentals and other charges which the board of regents shall pay to the authority for the use of each project or part thereof or combination of projects, to charge and collect them,

and to lease and make contracts with political subdivisions and agencies and with the board with respect to the use by any institution or unit under its control of any project or part thereof. Such rentals and other charges shall be so fixed and adjusted in respect to the aggregate thereof from the project or projects for which a single issue of revenue bonds is issued as to provide a fund sufficient with other revenues of such project or projects, if any, to pay:

(1) The cost of maintaining, repairing, and operating the project or projects, including reserves for extraordinary repairs and insurance and other reserves required by the resolution or trust indentures, unless such cost shall be otherwise provided for, which cost shall be deemed to include the expenses incurred by the authority on account of the project or projects for water, light, sewer, and other services furnished by other facilities at such institution; and

(2) The principal of the revenue bonds and the interest thereon as they shall become due.

(b) The rentals contracted to be paid by the board or other leasing department, agency, or institution of the state to the authority under leases entered upon pursuant to this article shall constitute obligations of the state for the payment of which the good faith of the state is pledged. Such rentals shall be paid as provided in the lease contracts from funds appropriated for such purposes by the terms of the Constitution of Georgia. It shall be the duty of the board or other leasing department, agency, or institution of the state to see to the punctual payment of all such rentals.

(c) In the event of any failure or refusal on the part of lessees punctually to perform any covenant or obligation contained in any lease entered upon pursuant to this article, the authority may enforce performance by any legal or equitable process against lessees; and consent is given for the institution of any such action.

(d) The authority shall be permitted to assign any rental due it by the lessees to a trustee or paying agent as may be required by the terms of any trust indenture entered into by the authority. (Ga. L. 1949, p. 1009, § 27; Ga. L. 1964, p. 104, § 3.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 41.

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 12 et seq.

#### 20-3-177. Rules and regulations for operation of projects.

It shall be the duty of the authority to prescribe rules and regulations for the operation of each project or combination of projects constructed



under this article, including rules and regulations to ensure maximum use or occupancy of each such project. (Ga. L. 1949, p. 1009, § 28.)

RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 41.

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 12 et seq.

**20-3-178. Accounts; audits.**

The accounts of the authority created in this article shall be kept as separate and distinct accounts by the treasurer of the board of regents and shall be subject to audit by the Department of Audits and Accounts. (Ga. L. 1949, p. 1009, § 32.)

**20-3-179. Power of regents to issue revenue bonds not affected.**

This article does not in any way take from the board of regents the authority to issue revenue bonds for a particular purpose. (Ga. L. 1949, p. 1009, § 33.)

**20-3-180. Article provides additional method and powers.**

This article shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby, shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing. (Ga. L. 1949, p. 1009, § 29.)

**20-3-181. Article to be liberally construed.**

This article, being for the welfare of the state and its inhabitants, shall be liberally construed to effect its purposes. (Ga. L. 1949, p. 1009, § 30.)

ARTICLE 6

PRIVATE COLLEGES AND UNIVERSITIES AUTHORITY

**20-3-200. Short title.**

This article may be cited as the “Private Colleges and Universities Authority Act.” (Ga. L. 1978, p. 1765, § 1; Ga. L. 1983, p. 1820, § 1.)

**20-3-201. Definitions.**

As used in this article, the term:

(1) "Authority" means the Private Colleges and Universities Authority created by this article and any successor or successors thereto. Any change in name or composition of the authority shall in no way affect the vested rights of any person under this article.

(2) "Bond," "bonds," or "revenue bonds" means revenue bonds of the authority issued under this article, including revenue refunding bonds, notwithstanding that such bonds may be secured by a mortgage or the full faith and credit of a participating institution for higher education or any other lawfully pledged security of a participating institution for higher education.

(3) "Borrower" means any student who has received an education loan or any parent who has received or agreed to repay an education loan.

(4) "Construction project" means a structure or structures available for use as a dormitory or other student housing facility; a dining hall; student union; administration building; academic building; library; laboratory; research facility; classroom; athletic facility; health care facility; maintenance, storage, or utility facility; and other structures or facilities related thereto or required or useful for the instruction of students or the conducting of research or the operation of an institution of higher education, whether proposed, under construction, or completed, including parking and other facilities or structures essential or convenient for the orderly conduct of such institution for higher education; shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which it is intended but shall not include any items the costs of which are customarily deemed to result in a current operating charge and shall not include any facility used or to be used for sectarian instruction or as a place of religious worship nor any facility which is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination. "Construction project" also means any one or more buildings or structures owned, leased, or operated by an institution for higher education, including, without limitation, hospitals; clinics; extended-care facilities; emergency-care facilities; out-patient facilities; alcohol and drug detoxification facilities; training facilities for nurses, interns, physicians, dentists, or other staff members; housing for nurses, residents, and interns; medical and dental office facilities; and other structures or facilities related thereto or required or useful for such purposes, whether proposed, under construction, or completed, including parking and other facilities or structures essential or convenient for such purposes; and shall also include landscaping, site preparation, furniture,

equipment and machinery, and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which it is intended but shall not include any items the costs of which are customarily deemed to result in a current operation charge. The term "construction project" also means and includes the acquisition, construction, improvement, or modification of any property, whether real or personal, which shall be suitable for or used as or in connection with an exhibition hall, museum, or other structure or structures for the display by an institution of higher education of the works of its students or faculty or of professional or other artists.

(5) "Cost," as applied to a project or any portion thereof financed under this article, means, if such project is a construction project, all or any part of the cost of construction, acquisition, alteration, enlargement, reconstruction, and remodeling of a construction project, including all lands, structures, real or personal property, rights, rights of way, franchises, easements, permits, approvals, licenses, and certificates and the securing of such permits, approvals, licenses, and certificates, and interests acquired or used for or in connection with a construction project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved; the cost of all machinery and equipment; financing charges; underwriters' commissions or discounts; interest prior to, during, and for a period of six months following estimated completion of such construction and acquisition; provisions for reserves for principal and interest and for extensions, enlargements, additions, and improvements; the cost of architectural, engineering, financial, and legal services, plans, specifications, studies, surveys, estimates of cost and revenues; administrative expenses; expenses necessary or incident to determining the feasibility or practicability of constructing the construction project; and such other expenses as may be necessary or incident to the construction and acquisition of the construction project, the financing of such construction and acquisition, and the placing of the construction project in operation. If such project is an education loan program, the term "cost," as applied to a project or portion thereof financed under the provisions of this article, means all or any part of the moneys needed to fund the loan program and the expenses of administration and operation of such education loan program, including the fees and expenses of persons engaged by the authority or by a participating institution for higher education to originate or service education loans or to conduct financial feasibility studies. All funds paid or advanced for any of the purposes aforesaid by any institution for higher education prior to the issuance of any of the authority's revenue bonds may be refunded to such institution out of the proceeds of any revenue bonds so issued. Any obligation or



expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds or notes issued under this article for such project.

(6) "Cost of attendance" means the amount defined by the participating institution for higher education for the purpose of the guaranteed student loan program as defined in Title IV, Part B, of the Higher Education Act of 1965, 20 U.S.C.A. Section 1071, et seq., as said statute existed on January 1, 1983.

(7) "Education loan" means a loan which is made by a participating institution for higher education pursuant to this article to a student or parents, or both, in amounts not in excess of the maximum amounts specified in this paragraph to finance the student's attendance at such institution. The maximum loan amount shall not exceed:

(A) In the case of a borrower who is a student, the student's cost of attendance for the period of time for which the loan is made minus the following amounts applicable to such period of time:

(i) The amount of grant which the student receives under the federal Pell Grant program authorized under Title IV, Part A, of the Higher Education Act of 1965, 20 U.S.C.A. Section 1070, et seq., whether or not the student has made application for such grant;

(ii) The maximum net guaranteed student loan proceeds which the student receives pursuant to Title IV, Part B, of the Higher Education Act of 1965, 20 U.S.C.A. Section 1071, et seq., whether or not the student has made application for such loan;

(iii) The amount of scholarships, grants, or other nonrepayable assistance received by the student from government agencies, educational institutions, or private institutions or organizations; and

(iv) The amount of loan proceeds which the student receives pursuant to Title IV, Part E, of the Higher Education Act of 1965, 20 U.S.C.A. Section 1087aa, et seq.; and

(B) In the case of a borrower who is a parent, the student's cost of attendance minus:

(i) The amounts determined pursuant to subparagraph (A) of this paragraph; and

(ii) The amount of loan, if any, which the student receives pursuant to this article.

(8) “Education loan program” means a program for making education loans from moneys provided by the authority instituted by any one or more participating institution or institutions for higher education.

(9) “Institution for higher education” means a nonprofit educational institution which is not owned or controlled by the state or any political subdivision, agency, instrumentality, district, or municipality thereof, which provides a program of education beyond the high school level and which:

(A) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(B) Provides an educational program for which it awards a bachelor’s degree or provides an educational program, admission into which is conditioned upon the prior attainment of a bachelor’s degree or its equivalent, for which it awards a postgraduate degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree; and

(C) Is accredited by a nationally recognized accrediting agency or association or, if not so accredited, is an institution whose credits are accepted, on transfer, by the university system and its educational units for credit on the same basis as if transferred from an institution so accredited,

or any nonprofit corporation organized solely for the benefit of such an institution; provided, however, that a nonprofit educational institution which is otherwise an institution for higher education as defined in this paragraph shall be deemed to be an institution for higher education notwithstanding such institution’s maintenance of a special early-admission policy for gifted high school students.

(10) “Parent” or “parents” means any parent or guardian or the parents or guardians of a student at a participating institution for higher education.

(11) “Project” means a construction project or an education loan program, or both, as the case may be.

(12) “Property” means any real, personal, or mixed property or any interest therein, including, without limitation, any real estate, appurtenances, buildings, easements, equipment, furnishings, furniture, improvements, machinery, rights of way, and structures, or any interest therein.

(13) “Revenues” means, with respect to any project, the rents, purchase installments, loan repayment proceeds, fees, charges, and

other moneys derived by the authority therefrom in connection with the lease, sale, or financing thereof.

(14) "Student" means any individual who possesses a certificate of admission or enrollment at a participating institution for higher education and who satisfies any requirements established by such institution with respect to participation in the education loan program maintained by such institution. (Ga. L. 1978, p. 1765, § 3; Ga. L. 1979, p. 1069, § 1; Ga. L. 1981, p. 1331, §§ 1, 2; Ga. L. 1982, p. 3, § 20; Ga. L. 1983, p. 1820, § 2; Ga. L. 1992, p. 6, § 20; Ga. L. 1999, p. 402, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1996, a comma was added following "Section 1071" in paragraph (6) and subdivision (7)(A)(ii),

following "Section 1070" in subdivision (7)(A)(i), and following "Section 1087aa" in subdivision (7)(A)(iv).

### RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 142.

### **20-3-202. Creation; membership; officers; compensation of members; expenses of members; organization; duration; quorum.**

There is created a public body corporate and politic to be known as the Private Colleges and Universities Authority, and by that name, style, and title such body may contract and be contracted with, bring and defend actions and implead and be impleaded, and complain and defend in all courts of law and equity. Such authority, however, shall not be a state institution nor a department or agency of the state but shall be an instrumentality of purely public charity performing an essential governmental function, being a distinct corporate entity. Article VII, Section IV, Paragraph VII of the Constitution of Georgia and Article 2 of Chapter 17 of Title 50, the "Georgia State Financing and Investment Commission Act," shall not apply to the authority created in this Code section. The authority shall consist of five members appointed by the Governor. Two of the members appointed in 1978 shall be appointed for a term expiring January 1, 1980; two shall be appointed for a term expiring January 1, 1982; and one shall be appointed for a term expiring January 1, 1984. Thereafter, each member shall be appointed for a six-year term. The Governor shall fill the unexpired term of any member so appointed who shall cease to serve. All members appointed shall serve until their successors are appointed and qualified and any member may be reappointed. Immediately after each such appointment, such member of the authority shall enter upon his duties. The authority shall elect one of its members as chairman and another as vice-chairman and shall appoint a secretary, who need not be a member



of the authority. The members of the authority may be compensated in an amount not to exceed the per diem amount paid to the members of the General Assembly under applicable Georgia law as in effect from time to time, plus actual expenses incurred, from the funds available to pay the administrative costs and expenses incurred by the authority, for each day's service spent in the performance of the duties of the authority. The authority may make rules and regulations for its own government, including, but not limited to, the payment of compensation to its members. The authority shall have perpetual existence. At all meetings of the authority the presence in person of a majority of the members in office shall be necessary for the transaction of business, and the affirmative vote of a majority of the members then in office shall be necessary for any action of the authority. (Ga. L. 1978, p. 1765, § 2; Ga. L. 1982, p. 1699, §§ 3, 6; Ga. L. 1983, p. 3, § 53; Ga. L. 1983, p. 1820, § 3; Ga. L. 1987, p. 353, § 1; Ga. L. 1992, p. 6, § 20.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1987, a comma was deleted following "title" in the first sentence.

RESEARCH REFERENCES

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| <p><b>C.J.S.</b> — 81A C.J.S., States, § 141.</p> <p><b>ALR.</b> — Immunity of private schools and institutions of higher learning from liability in tort, 38 ALR3d 480.</p> <p>Tort liability of private schools and in-</p> | <p>stitutions of higher learning for negligence of, or lack of supervision by, teachers and other employees or agents, 38 ALR3d 908.</p> |
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20-3-203. Purpose; powers and duties.

The purpose of the authority shall be to assist institutions for higher education. The exercise by the authority of the powers conferred by this article shall be deemed and held to be the performance of an essential public function. For the purpose of this article, the authority shall have the powers and duties set forth in this Code section:

- (1) To adopt an official seal and alter the same at its pleasure;
- (2) To bring or defend any action;
- (3) To maintain an office at such place or places as it may designate;
- (4) To determine the location and character of any construction project financed under this article; to acquire, construct, reconstruct, remodel, maintain, manage, enlarge, alter, add to, repair, operate, lease as lessee or lessor, sell, or otherwise dispose of any construction project in any manner it deems to the best advantage of the authority and the purposes thereof and to insure such construction project against any and all risks as such insurance may, from time to time, be available; to enter into contracts for any or all of such purposes; and

to permit participating institutions for higher education to perform all of the foregoing as the authority's agent. Contracts entered into by the authority may be negotiated and shall not be subject to any laws governing public contracts or requiring competitive bidding;

(5) To finance projects for participating institutions for higher education through the issuance of authority revenue bonds and the lending of such revenue bond proceeds to the participating institution for higher education under such loan agreements or repayment contracts as the authority deems necessary or appropriate;

(6) To issue revenue bonds of the authority for any of its corporate purposes and to fund or refund them, all as provided in this article;

(7) To fix and revise from time to time and charge and collect rates, rents, purchase payments, fees, and charges for the use and for the services furnished or to be furnished by a project or any portion thereof or in connection with the financing thereof; and to contract with this state and its agencies, instrumentalities, departments, and political subdivisions and any person, partnership, association, or corporation or other body, public or private, in respect thereto;

(8) To establish rules and regulations for use of or eligibility for any project or any portion thereof; to designate a participating institution for higher education as its agent to establish rules and regulations for the use of or eligibility for a project undertaken for that participating institution for higher education; and to establish rules, regulations, and policies necessary, appropriate, or convenient for the administration of its affairs, the execution of its powers, duties, and functions, and the accomplishment of its corporate purposes;

(9) To employ consulting engineers, architects, attorneys, bond counsel, accountants, construction and financial experts, fiscal agents, superintendents, managers, such entities as the authority shall deem necessary to provide education loan origination and administration assistance to the authority or to a participating institution for higher education with respect to any education loan program, and such other employees and agents as may be necessary in its judgment and to fix their compensation; provided, however, that all costs, fees, and expenses incurred in connection with the employment of any persons as permitted by this paragraph shall not be an obligation of the state or any political subdivision thereof but must be payable solely from the proceeds of obligations issued by the authority or from revenues received by the authority from participating institutions for higher education as reimbursement for its administrative costs and expenses;

(10) To receive and accept from any source, other than state or local public funds, loans, contributions, gifts, or grants for or in aid of

the construction of a project or any portion thereof in either money, property, labor, or other things of that value; and, when required, to use such funds, property, or labor only for the purposes for which it was loaned, contributed, given, or granted;

(11) To make loans to any participating institution for higher education for the cost of a project in accordance with a financing agreement between the authority and the participating institution for higher education, provided that no such loans shall exceed the total cost of the project as determined by the participating institution for higher education and approved by the authority;

(12) To make loans to a participating institution for higher education to refund outstanding obligations or advances issued, made, or given by such participating institution for higher education for the cost of the project;

(13) To charge to and apportion among participating institutions for higher education the administrative costs and expenses incurred by the authority in the exercise of the powers and duties conferred upon it by this article;

(14) To borrow money for any of its corporate purposes and to issue negotiable revenue bonds in the manner more fully set forth in Code Section 20-3-204, which revenue bonds shall be payable solely from funds pledged for that purpose; and to provide for the payment of such bonds and for the rights of the holders thereof;

(15) To pledge, mortgage, or convey by deed to secure debt, chattel mortgage, or bill of sale to secure debt all or any portion of any construction project and any other educational facilities conveyed to the authority for such purpose and the site or sites thereof, whether presently owned or subsequently acquired, for the benefit of the holders of the bonds of the authority issued to finance such construction project or any portion thereof or issued to refund or refinance outstanding indebtedness of a participating institution for higher education as permitted by this article;

(16) To issue bonds for the purpose of refunding or refinancing the outstanding indebtedness of a participating institution for higher education, whether or not outstanding prior to or after April 4, 1978, provided that such indebtedness was originally incurred for the purpose of paying the cost of a project as defined in this article;

(17) To exercise any power usually possessed by private corporations performing similar functions, provided the exercise of such power is not in conflict with the Constitution and laws of this state;

(18) To invest any accumulation of its funds and any sinking fund or reserves in any manner that public funds of this state or its political subdivisions may be invested; and



(19) To do all things necessary or convenient to carry out the powers expressly given in this article and any amendment hereto. (Ga. L. 1978, p. 1765, § 4; Ga. L. 1981, p. 1331, §§ 3, 4; Ga. L. 1983, p. 1820, § 4.)

**Cross references.** — Powers of municipal and county housing authorities and board of regents as to construction and operation of dormitories for university system, § 8-3-17.

### RESEARCH REFERENCES

**ALR.** — Immunity of private schools and institutions of higher learning from liability in tort, 38 ALR3d 480.  
Tort liability of private schools and institutions of higher learning for negligence of, or lack of supervision by, teachers and other employees or agents, 38 ALR3d 908.

### 20-3-204. Issuance of revenue bonds; source of payment; negotiability; terms; validation; sale; interim and replacement bonds; execution; duration of liability.

(a) The authority is authorized from time to time to provide by resolution for the issuance of negotiable revenue bonds for the purpose of paying all or any part of the cost as defined in Code Section 20-3-202 of any of its projects. Such bonds may also be issued to pay off, refund, or refinance any outstanding bonds or other obligations of any nature owed by the authority, whether or not such revenue bonds or other obligations shall then be subject to redemption, and the authority may provide for such arrangements as it may determine for the payment and security of the revenue bonds being issued or for the payment and security of the revenue bonds or other obligations to be paid off, refunded, or refinanced. The principal, premium, if any, and interest of such revenue bonds shall be payable solely from the revenues, receipts, and earnings to be received by the authority in connection with the lease, sale, financing arrangement, or other disposition of the project for which the revenue bonds were issued. All revenue bonds issued by the authority are declared to be negotiable for all purposes, notwithstanding their payment from a limited source and without regard to any other law or laws. The authority may limit the negotiability of its obligations by issuing them in nonnegotiable or registered form or by providing for future registration under such terms and conditions as it may choose.

(b) The revenue bonds may be issued as serial bonds or as term bonds or a combination of each in one or more series and shall bear such date or dates; mature at such time or times, not exceeding 40 years from their respective dates of issue; bear interest at such rate or rates without regard to any limitations contained in any other statute or law of this state; be payable at such time or times; be in such denomina-

tions; be in such form, either coupon or fully registered; carry such registration and conversion privileges; have such rank or priority; be payable in lawful money of the United States at such places, within or outside this state; and be subject to such terms of redemption as such bond resolution may provide.

(c) All revenue bonds issued by the authority shall be subject to validation in accordance with Article 3 of Chapter 82 of Title 36, the "Revenue Bond Law" of the State of Georgia. All proceedings to validate revenue bonds of the authority shall be held in the Superior Court of Fulton County and judgments of validation obtained in the manner set forth in such chapter shall be forever conclusive upon the validity of such bonds and the security for such bonds as therein provided. The petition and complaint for validation shall also make party defendant to such action any participating institution for higher education which has contracted with the authority in connection with the issuance of the bonds or regarding the manner in which such bonds are to be secured; and such participating institution for higher education shall be required to show cause, if any exists, why such security and the terms and conditions thereof should not be inquired into by the court, the validity of the terms thereof determined, and the security adjudicated as a binding obligation of the participating institution for higher education for the payment of any such bonds of the authority. The bonds when validated and the judgment of validation shall be final and conclusive with respect to such bonds against the authority issuing the same, any parties to the validation proceedings, or any persons who might properly have become parties to said proceedings. The certificate of validation, however, may be signed with the facsimile or manually executed official signature of the clerk or deputy clerk of the Superior Court of Fulton County.

(d) The authority may sell its revenue bonds in such manner and for such price, at public or private sale, as it may determine to be for the best interest of the authority. Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim certificates or receipts or temporary bonds for definitive bonds upon issuance of the latter. The authority may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

(e) The bonds shall be signed by the chairman of the authority, and the corporate seal of the authority shall be thereunto impressed, imprinted, or otherwise reproduced and attested by the signature of the secretary of the authority. The coupons shall be signed in such manner as may be directed by the authority. The signatures of the officers of the authority and the seal of the authority upon any bond, note, or other debt security issued by the authority may be by facsimile if the instrument is authenticated or countersigned by a trustee other than



the authority itself or an officer or employee of the authority. All bonds or notes issued under authority of this article bearing signatures or facsimiles of the signatures of officers of the authority in office on the date of the signing thereof shall be valid and binding, notwithstanding that before the delivery thereof and payment therefor such officers whose signatures appear thereon shall have ceased to be officers of the authority.

(f) Interest shall cease to accrue on any bond on the date that such bond becomes due for payment if such payment is made or duly provided for, but liability for such bond and the accrued interest thereon shall continue until such bond is 20 years overdue for payment. At that time, unless demand for payment has been made, such obligation shall be extinguished and shall be deemed no longer outstanding. (Ga. L. 1978, p. 1765, § 5; Ga. L. 1983, p. 1820, § 5; Ga. L. 1984, p. 22, § 20.)

**Cross references.** — Revenue bonds generally, § 36-82-60 et seq.

### **20-3-205. Immunity from liability of members and persons executing bonds or notes.**

Neither the members of the authority nor any person executing bonds or notes on behalf of the authority shall be personally liable thereon by reason of the issuance thereof. (Ga. L. 1978, p. 1765, § 6.)

### **RESEARCH REFERENCES**

**Am. Jur. 2d.** — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 104.

**C.J.S.** — 81A C.J.S., States, § 126.

**ALR.** — Remedy available against invalid judgment in favor of United States, state, or other governmental unit immune to suit, 163 ALR 244.

Validity and construction of legislation conferring personal immunity on public officers or employees for acts in course of duty, 163 ALR 1435.

### **20-3-206. Credit of state or subdivisions not pledged; no taxation or appropriation for authority.**

Revenue bonds issued under this article shall not be deemed to constitute a debt or pledge of the faith and credit of this state or any political subdivision thereof within the meaning of any provision of the Constitution or laws of this state, but such revenue bonds shall be payable solely from the revenues and receipts received by the authority in connection with the financing of any project as permitted in this article. Revenue bonds issued by the authority shall not directly, indirectly, or contingently obligate the state or any of its political subdivisions to levy or to pledge any form of taxation whatever therefor or to make any appropriation for the payment thereof; and all such



revenue bonds or other obligations of the authority shall contain recitals on their face covering substantially the foregoing provisions of this Code section. No state or local public funds shall be appropriated for use of the authority created by this article. (Ga. L. 1978, p. 1765, § 7.)

RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 383 et seq.

20-3-207. Remedies of bondholders.

The authority may, by appropriate resolution, trust indenture, mortgage, or other security agreement, provide the holders of any of its revenue bonds or interest coupons such rights and remedies, in law or in equity, as may be necessary or desirable in connection with the issuance of such obligations. (Ga. L. 1978, p. 1765, § 9.)

RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 250, 251.      **C.J.S.** — 81A C.J.S., States, § 261.

20-3-208. Pledge of and lien on revenues to secure bonds.

The revenues, rents, purchase payments, financing charges, or other earnings derived from any particular project may be pledged and allocated by the authority pursuant to appropriate resolution as security for any issue of revenue bonds; and such resolution may fully provide for such remedies of bondholders as may be deemed necessary or appropriate by the authority in connection with the issuance of the revenue bonds. A statutory lien on revenues received by the authority in connection with the financing of any project is created for the benefit of the holders of the revenue bonds of the authority issued for such project. (Ga. L. 1978, p. 1765, § 8.)

RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 385, 388.      **C.J.S.** — 81A C.J.S., States, § 261.

20-3-209. Exemption of authority and bonds from taxation.

The creation of the authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of this state and is a public purpose, and the authority will be performing an essential governmental function in the exercise of the power conferred upon it by

this article; the state covenants with the holders of the bonds and any interest coupons appertaining thereto that the authority shall be required to pay no taxes or assessments imposed by the state or any of its counties, municipal corporations, political subdivisions, or taxing districts upon any of the property acquired or leased by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation or maintenance of the buildings erected or acquired by it or upon any fees, rentals, charges, or purchase price, received in installments or otherwise, pertaining to such buildings or upon other income received by the authority; that the bonds of the authority, their transfer, and the interest and income therefrom shall at all times be exempt from taxation within this state; and that the recording of any indenture or security deed by the authority shall be exempt from recording taxes and fees and from intangibles tax. The tax exemption provided in this Code section shall not include any exemption from sales or use tax on property purchased by the authority or for use by the authority, except that the authority shall be entitled to such exemption with respect to property for any particular project as is available to the participating institution for higher education pursuant to Article 1 of Chapter 8 of Title 48. (Ga. L. 1978, p. 1765, § 10.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 71 Am. Jur. 2d, State and Local Taxation, § 3.      **C.J.S.** — 84 C.J.S., Taxation, § 251.

#### 20-3-210. Interest of bondholders protected.

While any of the revenue bonds issued by the authority remain outstanding, the powers, duties, or existence of the authority or of any of its officers shall not be diminished or impaired in any manner that will affect adversely the interest and rights of the holders of such revenue bonds. This article shall be for the benefit of the state, the authority, and the holders of any such revenue bonds and, upon the issuance of the revenue bonds as provided in this article, such provisions shall constitute a contract with the holders of such revenue bonds. The provisions of any bond resolution, indenture, or trust agreement shall be a contract with every holder of such revenue bonds; and the duties of the authority under any such bond resolution, indenture, or trust agreement shall be enforceable by any bondholder by mandamus or other appropriate action or proceeding at law or in equity. (Ga. L. 1978, p. 1765, § 12.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 250, 251.      **C.J.S.** — 81A C.J.S., States, § 262.

**20-3-211. Disposition of moneys received by authority.**

(a) All moneys received by the authority pursuant to this article, whether as grants or other contributions or as revenues, rents, or earnings, shall be held and applied to the expenses, outstanding bond obligations, and other obligations of the authority.

(b) In the event this authority shall be dissolved, all authority money remaining after the payment of the authority's obligations or provisions for payment thereof shall accrue to the state. (Ga. L. 1978, p. 1765, § 13; Ga. L. 1981, p. 1331, § 5; Ga. L. 1987, p. 353, § 2.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Funds, §§ 2, 33 et seq.      **C.J.S.** — 81A C.J.S., States, § 261.

**20-3-212. Title to projects.**

The authority may hold title to any project financed by it but shall not be required to do so. (Ga. L. 1978, p. 1765, § 14.)

**20-3-213. Venue and jurisdiction of actions under this article.**

The authority's legal situs or residence for the purpose of this article shall be Fulton County. Any action to protect or enforce any rights under this article, including the validation of obligations issued by the authority as permitted in this article, shall be brought in the Superior Court of Fulton County; and such court shall have exclusive original jurisdiction of all such actions. (Ga. L. 1978, p. 1765, § 11.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 77 Am. Jur. 2d, Venue, §§ 4, 5.      **C.J.S.** — 92A C.J.S., Venue, § 3.

**20-3-214. Liberal construction of article.**

This article, being for the welfare of the state and its inhabitants, shall be liberally construed to effect its purposes. (Ga. L. 1978, p. 1765, § 15.)

**ARTICLE 7**

**SCHOLARSHIPS, LOANS, AND GRANTS**

**Cross references.** — Educational assistance programs, Ga. Const. 1983, Art. VIII, Sec. VII. Transfer of funds to board of regents upon failure of shareholder to present securities for redemption, surrender, cancellation, or payment when prop-



erly called for, § 14-2-641. State funding of medical education and training programs provided by county and municipal

hospital authorities, § 31-7-95. Education benefits for veterans, § 38-4-30 et seq.

## PART 1

### GEORGIA STUDENT FINANCE COMMISSION

**Administrative rules and regulations.** — School eligibility standards for participation in the assured access lending program, Official Compilation of the

Rules and Regulations of the State of Georgia, Georgia Student Finance Commission, Chapter 268-11-2 et seq.

## 20-3-230. Short title.

This part shall be known and may be cited as the “Georgia Student Finance Commission Act.” (Code 1933, § 32-3101, enacted by Ga. L. 1980, p. 835, § 1.)

**Editor’s notes.** — The Georgia Student Finance Commission is the successor to the Georgia State Scholarship Commission (see former Code Section 20-2-233(b)), the creation of which was authorized by constitutional amendment ratified in 1964 and contained in Ga. Const. 1976, Art. X, Sec. II, Para. V (see now Ga. Const. 1983, Art. XI, Sec. I, Para. D). The first Georgia State Scholarship Commission was created by Ga. L. 1964, p. 699, and abolished by Ga. L. 1965, p. 210, § 11. A new Georgia State Scholarship Commission was created by Ga. L.

1965, p. 210, which was subsequently amended by Ga. L. 1966, p. 465; Ga. L. 1967, p. 640; Ga. L. 1968, p. 385; Ga. L. 1969, p. 246; Ga. L. 1969, p. 826; Ga. L. 1971, p. 520; and Ga. L. 1974, p. 461. In 1972, the Executive Reorganization Act provided that the State Scholarship Commission and its functions were continued. See Ga. L. 1972, p. 1015, § 1901. In 1980, Ga. L. 1965, p. 210, as amended, creating the Georgia State Scholarship Commission, was repealed by Ga. L. 1980, p. 835, which also enacted this part and Parts 2 and 3 of this article.

## 20-3-231. Legislative findings; purpose of commission.

(a) **Legislative findings.** The General Assembly has determined that it is a valid public purpose to promote the educational level of achievement of citizens and persons in this state by creating the Georgia Higher Education Assistance Corporation, a public authority, as provided for in Part 2 of this article, for the purpose of establishing and administering an educational loan program in this state in such a manner as not to pledge the faith and credit of the state to the payment of such educational loans as may be guaranteed by the corporation. The General Assembly has determined that it is a valid public purpose to promote further the educational level of achievement of citizens and persons in this state by creating the Georgia Student Finance Authority, a public authority, as provided for in Part 3 of this article, for the purpose of providing educational scholarship, grant, and loan assistance to citizens and persons in this state, in large part by educational

loans to be funded through the issuance of revenue bonds and other obligations by the authority in such a manner as not to pledge the faith and credit of the state to the payment of such bonds and obligations and to use further such bond funds to provide a form of secondary market for lenders in further support of the educational loan program of the state. The General Assembly finds that it is desirable and cost efficient and will permit greater coordination of state student aid programs; maximum utilization of available student aid funds; simplification of procedures for students, parents, and educational institutions; and possible prevention of frauds and abuses, and thereby better serve the public interests of the state if a maximum degree of centralization in the management and administration of the functions of the corporation and the authority is provided for; and, further, that although public moneys may within the provisions of the Constitution of Georgia be appropriated for use by the corporation and by the authority for prescribed student aid purposes, such moneys may not be lawfully appropriated directly to the corporation nor the authority but must, in lieu thereof, be appropriated to an agency within the executive branch of state government for use by the corporation or the authority for such prescribed purposes. The General Assembly resolves, therefore, that in order to accomplish the foregoing essential and valid public purposes of the corporation as set forth in Part 2 of this article and of the authority as set forth in Part 3 of this article that it is necessary, essential, a valid public purpose, and within the meaning of the Constitution of Georgia to create the Georgia Student Finance Commission as an agency within the executive branch of state government for the purposes prescribed in this part.

(b) **Purpose of commission.** The purpose of the commission shall be to help improve the higher educational opportunities of citizens and persons in this state by serving as an agency and budget unit within the executive branch of state government for the purpose of carrying out and effectuating the powers, duties, and functions set forth in this part. (Code 1933, § 32-3102, enacted by Ga. L. 1980, p. 835, § 1; Ga. L. 1995, p. 961, § 1.)

RESEARCH REFERENCES

|   |   |
|---|---|
| C.J.S. — 81A C.J.S., States, § 120.   | prejudgment interest in tort actions, 40  |
| ALR. — Retrospective application and effect of statutory provision for interest or changed rate of interest, 4 ALR2d 932. | ALR4th 147.   |
| Validity and construction of state statute or rule allowing or changing rate of   | Retrospective application and effect of state statute or rule allowing interest or changing rate of interest on judgments or verdicts, 41 ALR4th 694. |

20-3-232. Definitions.

As used in this part, the term:

(1) "Authority" means the Georgia Student Finance Authority created by Code Section 20-3-313.

(2) "Board of commissioners" means the board of commissioners of the commission.

(3) "Commission" means the Georgia Student Finance Commission created by Code Section 20-3-233.

(4) "Corporation" means the Georgia Higher Education Assistance Corporation created by Code Section 20-3-263. (Code 1933, § 32-3103, enacted by Ga. L. 1980, p. 835, § 1.)

**20-3-233. Creation of commission as successor to State Scholarship Commission; transfer of assets.**

(a) There is created within the executive branch of state government a commission to be known as the Georgia Student Finance Commission. The commission shall be an agency of the state and a budget unit thereof.

(b) The commission created by subsection (a) of this Code section shall be the successor to and a continuation of, without interruption, the previously existing Georgia State Scholarship Commission created by an Act approved March 12, 1965 (Ga. L. 1965, p. 210), as amended. The change of the name of the Georgia State Scholarship Commission to the Georgia Student Finance Commission and its continuation, as provided in this Code section, shall in no way affect any existing obligations, liabilities, or rights of the previously existing Georgia State Scholarship Commission. All such obligations, liabilities, and rights are transferred to, vested in, and assumed by the commission created by subsection (a) of this Code section. All existing contracts and agreements between any party and the previously existing Georgia State Scholarship Commission shall not be affected by this Code section but shall continue in full force and effect, without interruption, as contracts or agreements between such party and the commission created by subsection (a) of this Code section.

(c) Title to and ownership of all tangible personal property of the previously existing Georgia State Scholarship Commission are transferred to and vested in the commission created by subsection (a) of this Code section.

(d) Right, title, interests in, and ownership of all other assets of the previously existing Georgia State Scholarship Commission, including, without limitation, student loan accounts receivable, interest thereon, and contract rights relative thereto, income on hand derived therefrom, and choses in action in respect thereof, are transferred to and vested in the authority; and such assets and all proceeds hereafter derived



therefrom shall be the property of and shall be used by the authority for educational loan and operating expense purposes as provided for in Subpart 3 of Part 3 of this article. (Code 1933, § 32-3104, enacted by Ga. L. 1980, p. 835, § 1.)

**Editor's notes.** — The Act creating the Georgia State Scholarship Commission, Ga. L. 1965, p. 210, as amended, referred to in subsection (b) of this Code section, was repealed by Ga. L. 1980, p. 835, § 5.

**20-3-234. Functions and composition of board of commissioners; appointment, qualifications, and terms of commissioners; board officers; meetings; committees; compensation; advisory councils.**

**(a) Functions and composition of board of commissioners.**

(1) The commission shall be governed and all of its powers, duties, and functions shall be exercised by a board of commissioners. The board of commissioners shall be composed of the following public commissioners, to be appointed by the Governor, subject to confirmation by the Senate: one public commissioner from each congressional district of the state who is and who remains during the term of his or her appointment a resident of the district being represented. The executive director of the commission, or president, if designated by such title by the board of commissioners, shall be an ex officio member of the board of commissioners. Neither the Governor nor any state official not designated in this paragraph shall be appointed as a commissioner. All public commissioner appointments made by the Governor when the Senate is not in session shall be effective ad interim.

(2) The board of commissioners provided for by paragraph (1) of this subsection shall be the successor to and a continuation of, without interruption, the board of commissioners of the previously existing Georgia State Scholarship Commission. The board of commissioners of the previously existing Georgia State Scholarship Commission, excepting the chairperson of the board of regents, who shall not be a member of the board of commissioners, shall be the board of commissioners created by subsection (a) of Code Section 20-3-233; and each public commissioner shall continue to serve for the term of office to which he or she was appointed. Upon expiration of his or her respective term or in the event of a vacancy, his or her successor shall be appointed, or appointments to fill vacancies occurring shall be made, by executive order of the Governor as provided for in this Code section.

**(b) Qualifications and terms of public commissioners.** Public commissioners shall be appointed by executive order of the Governor to

serve for a term of six years and until their successors are appointed and qualified and shall be eligible for reappointment to successive terms. Appointments made after the expiration of a term or to fill a vacancy occurring on the commission shall be made by the Governor in the same manner but only for the duration of the unexpired term. Public commissioners shall be at least 21 years of age, citizens of the United States, and residents of Georgia for at least two years at the time of their appointment. No public commissioner shall be currently employed or contracted by a public or private postsecondary institution in the State of Georgia. Public commissioners shall be subject to the code of ethics covering members of commissions, boards, directors, and authorities as set forth in Code Sections 45-10-3 and 45-10-4 and shall be subject to removal for violation thereof as provided for in such Code sections. No commissioner shall be eligible to become an officer or employee of the commission for a period of one year after expiration of the commissioner's period of service as a commissioner.

(c) **Officers of board of commissioners.** The officers of the board of commissioners shall consist of a chairperson and a vice chairperson, who shall serve as chairperson in the absence or incapacity of the chairperson, each of whom shall be elected from the public commissioners of the board to serve for a term of not more than two years and who shall be eligible for reelection to successive terms unless otherwise provided in the bylaws of the commission, and a secretary of the board of commissioners, who may be a commissioner or an employee of the commission.

(d) **Meetings of board of commissioners.** The board of commissioners shall provide for the holding of regular and special meetings. The board of commissioners shall hold at least one regular meeting during each fiscal year but may hold as many regular meetings during any fiscal year as may be deemed necessary. The chairperson is authorized to call at any time a special meeting of the board of commissioners, provided at least five days' advance notice is provided to each commissioner. A majority of the commissioners then in office shall constitute a quorum for the transaction of any business and for the exercise of any power, duty, or function of the board of commissioners; and no vacancy on the board of commissioners shall impair the right of a quorum of the commissioners then in office to transact any business or to exercise any power, duty, or function of the board of commissioners. The concurrence of a majority of commissioners present at any meeting of the board of commissioners at which a quorum is present shall be sufficient to constitute official action of the board of commissioners. All meetings of the board of commissioners shall be open to the public except as otherwise provided by state law. Meetings of the board of commissioners shall generally be held at the principal office or place of business of the commission but may be held elsewhere within the state when authorized by the board of commissioners.



(e) **Executive committee.** The board of commissioners is authorized to establish, elect, and provide for the organization and duties of an executive committee of the board of commissioners, to consist of not less than five commissioners, which may, in intervals between regular meetings of the board of commissioners, meet and transact any business and exercise any power, duty, or function of the board of commissioners unless otherwise restricted by the board of commissioners. The presence at a meeting of the executive committee of a majority of the members of such committee shall constitute a quorum. The concurrence of members of the executive committee equal to a majority of the membership of the executive committee shall be required to constitute official action of the executive committee. Any authorized official action taken by the executive committee shall be binding upon the board of commissioners and the commission until the next regular meeting of the board of commissioners. Meetings of the executive committee shall be open to the public except as otherwise provided by state law. Meetings of the executive committee shall generally be held at the principal office or place of business of the commission but may be held elsewhere within the state when authorized by the board of commissioners. Whenever the board of commissioners, at any regularly scheduled meeting of the board of commissioners, shall fail to have a quorum present, but a quorum of the executive committee of the board of commissioners is present, such meeting shall continue as an official meeting of the executive committee under this subsection for the purpose of taking any official action which the executive committee is otherwise authorized to take.

(f) **Other committees.** The board of commissioners is authorized to establish and provide for the organization and duties of such other interim or standing committees of the board of commissioners as it may deem necessary in the performance of its powers, duties, and functions. Such other committees may only be authorized to investigate or to consider, and to report their findings or recommendations to the board of commissioners, upon such matter or matters as the board of commissioners shall prescribe and may not be authorized to take any binding action for or on behalf of the board of commissioners.

(g) **Compensation of commissioners.** Public commissioners shall receive the sum provided by Code Section 45-7-21 for each day of actual attendance at meetings of the commission or for each day of travel, within or outside the state, as a member of the commission, which travel has been authorized by the chairperson or by action of the commission, plus reimbursement for actual transportation costs while traveling by public carrier or the legal mileage rate for the use of a personal automobile to and from the place of meeting. No member of the commission shall be authorized to receive the sums, expenses, and costs provided by this subsection for more than 18 days per year.



(h) **Advisory councils.** The board of commissioners is authorized to provide for the creation of one or more advisory councils pursuant to Code Section 50-4-4 as the board of commissioners may determine to be needful or helpful to the commission in the performance of its powers, duties, and functions under this part and to prescribe all matters relative thereto, including, without limitation, their membership, organization, duties, meetings, authorized travel, and the payment of per diem to and actual expenses incurred by advisory councilmembers while in the performance of duties prescribed by the board of commissioners. (Code 1933, § 32-3105, enacted by Ga. L. 1980, p. 835, § 1; Ga. L. 1989, p. 663, § 1; Ga. L. 1990, p. 1903, § 2; Ga. L. 1992, p. 6, § 20; Ga. L. 2003, p. 158, § 1.)

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Employees, §§ 47, 197, 211, 214. 81A Officers and Employees, § 130. C.J.S., States, §§ 120, 123, 127, 229.

**C.J.S.** — 67 C.J.S., Officers and Public

### 20-3-235. Commission officers, employees, and support services; bonds; legal services.

The board of commissioners shall provide for the employment of all personnel and for retention of all support services necessary to enable it to effectuate and carry out its powers, duties, and functions under this part, including, but without limitation, the following:

(1) **Chief executive officer.** The board of commissioners shall select and employ an executive director of the commission, or president, if designated by such title by the board of commissioners, who shall be the chief executive officer of the commission and who shall serve at the pleasure of the board of commissioners. The executive director may be employed on an annual basis by resolution adopted at a regular meeting of the board of commissioners or for a longer contractual period of time not to exceed three years. The executive director shall receive such salary and other compensation and benefits as determined and fixed by the board of commissioners. He shall cause to be filed with the commission a fidelity bond in the minimum sum of \$100,000.00, conditioned upon the faithful performance of his duties under this part, and such additional bond coverage as the board of commissioners may direct; and the cost thereof shall be paid from funds available to the commission. The executive director shall provide for maintenance of accurate and permanent minutes and records of all proceedings and activities of the board of commissioners and the commission and have authority and responsibility to implement and carry out all administrative powers, duties, and functions of the commission in accordance with governing state and federal

laws and rules, regulations, and policies prescribed by the board of commissioners. Unless otherwise prescribed by the board of commissioners, the executive director is authorized to select, employ, and terminate the employment of, and prescribe the duties of, all officers and employees of the commission in accordance with applicable provisions of law;

(2) **Other officers.** The board of commissioners shall designate an employee of the commission to serve as treasurer of the commission. The treasurer shall receive and disburse all funds made available to the commission by the General Assembly or otherwise in accordance with law and as may be directed by the board of commissioners. The treasurer shall cause to be filed with the commission a fidelity bond in such sum as the board of commissioners shall direct, conditioned upon the faithful performance of his duties under this part and the proper accounting of all funds coming into possession or control of the commission; and the cost thereof shall be paid from funds available to the commission. The board of commissioners is authorized to designate the executive director as treasurer. The board of commissioners shall also designate an employee of the commission to serve as secretary of the commission. The board of commissioners is further authorized to designate other budgeted personnel positions of the commission as officers of the commission and to ascribe to such positions such duties, responsibilities, and official titles as it may deem appropriate;

(3) **Personnel.** The commission is authorized to employ, on a full-time, part-time, or contractual basis, all officers, employees, professional personnel, agents, experts, consultants, and other personnel needed for the performance of its powers, duties, and functions under this part. Officers and employees of the commission are authorized to travel within and outside the state in connection with the performance of their duties as may be authorized by the board of commissioners;

(4) **Fidelity bonds.** All officers and employees of the commission and public commissioners shall be covered by a fidelity bond or bonds in such sum or sums and conditioned for such purpose or purposes as the board of commissioners shall determine, and the cost thereof shall be paid from funds available to the commission; and

(5) **Legal services.** Legal services shall be provided to the commission, the corporation, and the authority by the Attorney General as provided for by state law, or by private attorneys designated by the Attorney General, or, if authorized by the Attorney General, by private attorneys selected and retained or employed by the commission, the corporation, or the authority for the purposes authorized by the Attorney General. The commission is authorized to provide for

paying from funds available to the commission, the corporation, or the authority all legal costs incurred, including, without limitation, attorneys' fees, court costs, and all other costs and expenses incurred incident to the retention of legal services and in respect of legal proceedings. (Code 1933, § 32-3106, enacted by Ga. L. 1980, p. 835, § 1; Ga. L. 1996, p. 837, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Employees and Officers, §§ 88, 105 et seq.      **C.J.S.** — 67 C.J.S., Public Officers and Employees, § 74 et seq.

#### **20-3-236. Powers and duties of commission, board of commissioners, and officers.**

In addition to all other provisions of this part and in furtherance of the purposes of the commission, the commission shall have the following powers, duties, and functions:

(1) The board of commissioners shall serve as the board of directors of the corporation pursuant to this paragraph and Part 2 of this article; and, whenever they are convened as and are acting in the capacity of the board of directors of the corporation, they shall carry out and fully effectuate the powers, duties, functions, and corporate purposes of the corporation in accordance with Part 2 of this article without regard to any other power, duty, or function vested in them under this part or under any other provision of law;

(2) The board of commissioners shall serve as the board of directors of the authority pursuant to this paragraph and Part 3 of this article; and, whenever they are convened as and are acting in the capacity of the board of directors of the authority, they shall carry out and fully effectuate the powers, duties, functions, and corporate purposes of the authority in accordance with Part 3 of this article without regard to any other power, duty, or function vested in them under this part or under any other provision of law;

(3) The officers of the commission shall serve in the same capacity as officers of the corporation and as officers of the authority, respectively, pursuant to this paragraph and Parts 2 and 3 of this article, respectively. Nothing contained in this part, however, shall be construed to mean or require that the officers of the board of directors of the corporation and the officers of the board of directors of the authority shall be the same persons or that they shall be the same persons who are serving as officers of the board of commissioners under this part;

(4) The commission shall receive all moneys made available to the commission by the General Assembly or otherwise for purposes of the corporation and disburse such moneys to the corporation;



(5) The commission shall receive all moneys made available to the commission by the General Assembly or otherwise for purposes of the authority and disburse such moneys to the authority;

(6) The commission shall receive all moneys made available to the commission by the General Assembly or otherwise for purposes of the commission and use such moneys for purposes of the commission;

(7) The commission shall also have the following additional powers:

(A) To adopt an official seal and to alter the seal at its pleasure;

(B) To maintain a principal office and such other offices as it may deem necessary;

(C) To adopt bylaws and policies for the regulation of its affairs and the conduct of its business;

(D) To adopt rules and regulations necessary or appropriate for the administration of its affairs; the exercise of its powers, duties, and functions; and the accomplishment of its purposes, pursuant to this part;

(E) To enter into agreements and undertakings as may be necessary or appropriate in the exercise of its powers, duties, and functions under this part;

(F) To perform such other acts as may be necessary or appropriate to effectuate the purposes of the commission under this part;

(G) To enter into agreements with the United States government for the purpose of securing the benefits of any federal law which provides federal funds for any student financial aid purpose or for any activity related to student financial aid, including, without limitation, activities such as research activities, the collection and reporting of data, the administration of any activity related to student financial aid, and dissemination of information and services to the public; to comply with the provisions of such federal law; to adopt such rules, regulations, resolutions, and procedures as may be necessary to secure such federal funds; and to provide matching funds as may be required from funds available to the commission;

(H) To receive funds from any source, public or private, by gift, grant, bequest, or otherwise, either absolutely or in trust, and to hold, use, invest, administer, and expend such funds on behalf of the commission and for any of its purposes; and to acquire from any source, public or private, by purchase, lease, gift, bequest, or devise, any property, real, personal, or mixed, either absolutely or

in trust, and to hold, use, administer, and dispose of such property on behalf of the commission and for any of its purposes; and

(I) To advertise or otherwise promote the programs, functions, and purposes of the commission, the Georgia Higher Education Assistance Corporation, and the Georgia Student Finance Authority and to expend funds available to the commission for such purposes. (Code 1933, § 32-3107, enacted by Ga. L. 1980, p. 835, § 1; Ga. L. 1981, p. 735, § 52; Ga. L. 1992, p. 1001, § 1; Ga. L. 1996, p. 837, § 2.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 336, 339. **C.J.S.** — 14A C.J.S., Colleges and Universities, § 12 et seq. 81A C.J.S., States, §§ 123, 229.

#### **20-3-237. Division of board of commissioners to serve as directors of corporation and authority.**

If any federal law or rule shall at any time have the effect of prohibiting any person from simultaneously serving as a member of the board of directors of the corporation and as a member of the board of directors of the authority, the Governor is authorized, notwithstanding the provisions of this part or of Parts 2 and 3 of this article, to divide the persons who are serving as members of the board of commissioners as evenly as may be possible and, by executive order, designate the members of the commission who shall thereafter serve as members of the board of directors of the corporation and who shall thereafter serve as members of the board of directors of the authority. (Code 1933, § 32-3111, enacted by Ga. L. 1980, p. 835, § 1.)

#### RESEARCH REFERENCES

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 12 et seq.

#### **20-3-238. Accounting system; corporation moneys not to be used for authority's expenses.**

The commission shall maintain a system of accounts in accordance with generally acceptable accounting procedures and standard accounting procedures and systems established by the state, where applicable, which shall, among other things, properly identify and account for all funds received by the commission from the corporation and from the authority, respectively; the source of receipt of such funds by the corporation and by the authority, respectively; all expenditures of the commission made for or on behalf of the corporation or the authority,

respectively; all expenditures of the commission, a pro rata part of which is properly chargeable as an expenditure made for or on behalf of the corporation or the authority, respectively; and the basis or method used by the commission in prorating ratable expenditures of the commission to the corporation and to the authority, respectively. No agency fund moneys received by the commission from the corporation shall be expended by the commission in payment of expenses incurred for or on behalf of the authority. (Code 1933, § 32-3108, enacted by Ga. L. 1980, p. 835, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 16.      **C.J.S.** — 81A C.J.S., States, §§ 20, 24, 28, 120, 123.

#### **20-3-239. Annual audits; distribution of audit reports.**

The state auditor shall make an annual financial audit of the books, accounts, and records of the commission. The state auditor shall maintain a copy of the audit report on file in his or her office, make copies of the report available for inspection by the general public, and furnish a copy of the report to the commission, to members of the board of commissioners, and to the Governor and shall notify the members of the General Assembly of the availability of the report in the manner which he or she deems to be most effective and efficient. (Code 1933, § 32-3114, enacted by Ga. L. 1980, p. 835, § 1; Ga. L. 2005, p. 1036, § 15/SB 49.)

#### **20-3-240. Budget requests.**

The commission shall submit its regular and supplemental budget requests to the Governor at such times and in such form and manner as required by state law; provided, however, that the commission shall, in accordance with Code Section 50-4-3, include in its budget requests the respective budget requests, if any, of the corporation and of the authority as prepared and submitted to the commission by the corporation and by the authority. (Code 1933, § 32-3110, enacted by Ga. L. 1980, p. 835, § 1.)

#### RESEARCH REFERENCES

**C.J.S.** — 81A C.J.S., States, §§ 227, 234.



**20-3-241. Operations reports.**

The commission is authorized to publish in print or electronically annually or at less frequent intervals determined by the board of commissioners an operations report covering the activities of the commission, including, without limitation, a report of revenues and expenditures of the commission and a statement of the financial condition of the commission and to furnish copies of such report to the Governor and members of the General Assembly and to other public and private persons and agencies as it may deem appropriate. Such operations reports, if published, shall cover the activities of the commission for a period of one or more state fiscal years. (Code 1933, § 32-3112, enacted by Ga. L. 1980, p. 835, § 1; Ga. L. 2010, p. 838, § 10/SB 388.)

**The 2010 amendment**, effective June 3, 2010, inserted “in print or electronically” in the first sentence.

**20-3-242. Web based counseling and resources for students.**

Beginning in school year 2010-2011, the Georgia Student Finance Commission shall:

(1) Provide students in grades six through 12 with web based counseling advisement, career awareness inventories, and information to assist them in evaluating their academic skills and career interests; and

(2) Provide students in grades eight through 12 with a web based resource to develop a graduation plan to detail the courses necessary for a student to graduate from high school and to successfully transition to postsecondary education and the work force. (Code 1981, § 20-3-242, enacted by Ga. L. 2010, p. 408, § 1/SB 387.)

**Effective date.** — This Code section became effective July 1, 2010.

**PART 1A****NONPUBLIC POSTSECONDARY EDUCATIONAL INSTITUTIONS**

**Administrative rules and regulations.** — Nonpublic postsecondary education commission, Official Compilation of the Rules and Regulations of the State of Georgia, Chapter 392.

**RESEARCH REFERENCES**

**ALR.** — Misconduct of college or university student off campus as grounds for expulsion, suspension, or other disciplinary action, 28 ALR4th 463.

Tort liability of college, university, fraternity, or sorority for injury or death of member or prospective member by hazing or initiation activity, 68 ALR4th 228.

**20-3-250.1. Short title.**

This part shall be known and may be cited as the “Nonpublic Postsecondary Educational Institutions Act of 1990.” (Code 1981, § 20-3-250.1, enacted by Ga. L. 1990, p. 1166, § 3.)

**20-3-250.2. Definitions.**

As used in this part, the term:

(1) “Agent” means any natural person owning any interest in, employed by, or representing for remuneration a nonpublic postsecondary educational institution within or outside this state and who, by solicitation in any form made in this state, enrolls or seeks to enroll a resident of this state for education offered by such institution, or who offers to award educational credentials, for remuneration, on behalf of any such institution, or who holds himself or herself out to residents of this state as representing a nonpublic postsecondary educational institution for any such purpose.

(2) “Agent’s permit” means a nontransferable written authorization issued to a natural person by the executive director which allows that person to solicit or enroll any resident of this state for education in a nonpublic postsecondary educational institution.

(3) “Authorization to operate,” or like term, means authorization by the commission to operate or to contract to operate a nonpublic postsecondary educational institution in this state or to conduct nonpublic postsecondary activities.

(3.1) “Board of trustees” or “board” means the Board of Trustees of the Tuition Guaranty Trust Fund provided for in Code Section 20-3-250.27.

(4) “Certificate” means a diploma or similar document indicating satisfactory completion of training in a course or program of study, not leading to a postsecondary degree, which is offered by a nonpublic postsecondary educational institution.

(5) “Commission” means the Nonpublic Postsecondary Education Commission provided for in Code Section 20-3-250.4.

(6) “Course” means any plan or program of instruction or study, whether conducted in person, by mail, or by any other method.

(7) “Date of notice” means the date the notice is mailed by the executive director.

(8) "Education" or "educational services," or like term, means, but is not limited to, any class, course, or program of training, instruction, study, or testing.

(9) "Educational credentials" means certificates, degrees, transcripts, reports, documents or letters of designation, marks, appellations, series of letters, numbers, or words which signify, purport, or are generally taken to signify enrollment, attendance, progress, or satisfactory completion of the requirements or prerequisites for education at a nonpublic postsecondary educational institution.

(10) "Entity" means, but is not limited to, any company, firm, society, association, partnership, corporation, or trust.

(11) "Executive director" means the executive director of the Nonpublic Postsecondary Education Commission.

(11.1) "Gross tuition" means the total amount collected by a postsecondary educational institution during the most recently completed 12 month fiscal year, reduced only by the amount of refunds paid during the fiscal year, for tuition, application fees, registration fees, and those other fees deemed appropriate by rule or regulation of the commission; provided, however, that for a postsecondary educational institution located outside of this state which is authorized only for the purpose of advertising and recruiting in this state, or is authorized only for the purpose of offering instruction by correspondence or any telecommunications or electronic media technology, or a combination of these purposes, "gross tuition" means only the amount of such tuition and fees collected from residents of this state.

(12) "Nonpublic" means a private postsecondary educational institution not established, operated, or governed by the State of Georgia, or any public or private postsecondary educational institution legally operating in another state or nation that conducts postsecondary activities in Georgia or offers postsecondary instruction leading to a postsecondary degree or certificate granted to Georgia residents from a location outside Georgia.

(13) "Notice to the postsecondary educational institutions" means written correspondence sent to the address of record for legal service contained in the application for a certificate of authorization as provided for in this part.

(14) "Owner" of a postsecondary educational institution means:

(A) In the case of a postsecondary educational institution owned by an individual, that individual;

(B) In the case of a postsecondary educational institution owned by a partnership, all full, silent, and limited partners; and



(C) In the case of a postsecondary educational institution owned by a corporation, the corporation and each shareholder owning shares of issued and outstanding stock aggregating at least 10 percent of the total of the issued and outstanding shares.

(15) "Person" means any individual, firm, partnership, association, corporation, or other private entity.

(16) "Postsecondary degree" means a credential conferring on the recipient thereof the title of "Associate," "Bachelor," "Master," or "Doctor," or an equivalent title, signifying educational attainment based on:

(A) Study;

(B) A substitute for study in the form of equivalent experience or achievement testing; or

(C) A combination of the foregoing, provided that "postsecondary degree" shall not include any honorary degree or other so-called "unearned" degree.

(17) "Postsecondary activity" means awarding a postsecondary degree or certificate or conducting or offering study, experience, or testing for an individual, or certifying prior successful completion by an individual of study, experience, or testing under the representation that the individual successfully completing the study, experience, or testing will be awarded therefor, at least in part, a postsecondary degree or certificate.

(18) "Postsecondary educational institution" means a postsecondary degree-granting or certificate-granting nonpublic college or university or a proprietary school, offering instruction or educational services primarily to persons who have completed or terminated their secondary education or who are beyond the age of compulsory high school attendance, or any sole proprietorship, group, partnership, venture, society, company, corporation, school, or consortium of colleges, universities, or other institutions that engages in, purports to engage in, or intends to engage in any type of postsecondary activity.

(19) "Proprietary school" or "school" means any business enterprise operated for a profit or on a nonprofit basis which maintains a place of business within this state or solicits business within this state, which is not specifically exempted by Code Section 20-3-250.3, and which offers a course or courses of instruction or study available through classroom instruction, correspondence, or any telecommunications or electronic media technology, or any combination thereof, to a person or persons for the purpose of:

(A) Training such person or persons for work in a business, trade, or technical or industrial occupation; or

(B) Preparing such person or persons for taking and passing certification exams for work in a business, trade, or technical or industrial occupation.

(20) "School employee" means any person, other than any "owner" as defined in paragraph (14) of this Code section, who directly or indirectly receives compensation from a postsecondary educational institution for services rendered.

(21) "Student" means any person who contracts to pay for and be the recipient of any course defined in paragraph (6) of this Code section.

(22) "Support" or "supported" means the primary source or having as the primary source from which a postsecondary educational institution derives revenue to perform its operation.

(23) "Telecommunications or electronic media technology" means a delivery mode which utilizes but is not limited to television, video cassette or disc, film, radio, computer, or other supportive devices which build upon the audio-video format.

(24) "To grant" means awarding, selling, conferring, bestowing, or giving.

(25) "To offer" means, in addition to its usual meanings, advertising, publicizing, soliciting, or encouraging any person, directly or indirectly, in any form, to perform the act described.

(26) "To operate" an educational institution, or like term, means to establish, keep, or maintain any facility or location in this state where, from which, or through which education is offered or given or educational credentials are offered or granted and includes contracting with any person, group, or entity to perform any such act and to conduct postsecondary activities within this state or from a location outside of this state by correspondence or by any telecommunications or electronic media technology.

(27) "Tuition guaranty fund" or "fund" means the Tuition Guaranty Trust Fund provided for in Code Section 20-3-250.27. (Code 1981, § 20-3-250.2, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1991, p. 687, § 1; Ga. L. 1992, p. 6, § 20; Ga. L. 1992, p. 1657, § 1; Ga. L. 1992, p. 2615, § 1; Ga. L. 1993, p. 91, § 20; Ga. L. 1994, p. 1282, § 1; Ga. L. 1995, p. 728, § 1; Ga. L. 2002, p. 1414, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1991, a comma was deleted following "provided that" in subparagraph (16)(C).

**20-3-250.3. Educational institutions exempted from application of part.**

(a) The following education and postsecondary educational institutions are exempted from this part except as expressly provided to the contrary:

(1) Institutions exclusively offering instruction at any or all levels from preschool through the twelfth grade;

(2) Education sponsored by a bona fide trade, business, professional, or fraternal organization, so recognized by the commission, solely for that organization's membership or offered on a no-fee basis, not granting degrees;

(3) Education solely avocational or recreational in nature, as determined by the commission, and institutions, not granting degrees, offering such education exclusively;

(4) Postsecondary educational institutions established, operated, and governed by this state, its agencies, or its political subdivisions, as determined by the commission;

(5) Any flight school which holds an applicable federal air agency certificate issued by the administrator of the Federal Aviation Administration;

(6) Nonpublic, nonprofit, postsecondary educational institutions which demonstrate annually to the satisfaction of the commission that their purposes are solely to provide programs of study in theology, divinity, religious education, and ministerial training, and that they do not grant postsecondary degrees of a nonreligious nature and that such institutions:

(A) Accept no federal or state funds; and

(B) Accept no student who has a federal or state education loan to attend such institutions;

(7) Subject to the requirements of subsection (c) of Code Section 20-3-250.6, nonpublic law schools not accredited by the American Bar Association which are subject to the regulations and standards established by the Georgia Supreme Court for such schools;

(8) Nonpublic postsecondary educational institutions conducting postsecondary activity on the premises of military installations located in this state which are solely for military personnel stationed on active duty at such military installations, their dependents, or Department of Defense employees and other civilian employees of that installation;



(9) A school where the sole purpose of the instructional program is review or preparation for a specific occupational examination recognized by a government agency or bona fide trade, business, or fraternal organization and where the student's occupational training received from another school already makes the student eligible to sit for the examination;

(10) Subject to the requirements of subsection (c) of Code Section 20-3-250.6, any nonpublic, nonprofit college or university granting baccalaureate degrees whose principal office and campus are located in this state and its related graduate and professional programs, which have been in existence ten or more years as a nonpublic, nonprofit college or university prior to July 1, 1989, and is accredited by a national or regional accrediting agency recognized by the United States Department of Education;

(11) Subject to the requirements of subsection (c) of Code Section 20-3-250.6, any nonpublic institute of paper science and technology offering graduate degrees and which is allied with a public research university and accredited by a national or regional accrediting agency recognized by the United States Department of Education;

(12) Subject to the requirements of subsection (c) of Code Section 20-3-250.6, any liberal arts college or university whose principal office and campus are located in this state and its related graduate and professional programs, if any, which was chartered prior to 1955 as a nonpublic, nonprofit, degree-granting institution, provided that it is accredited by a regional or national accrediting agency recognized by the United States Department of Education;

(13) Any institution offering only education or training in income tax theory or income tax return preparation when the total contract price for such education or training does not exceed \$400.00, provided that the total charges incurred by any student for all instruction, other than instruction which is solely avocational or recreational in nature as provided in paragraph (3) of this subsection, do not exceed \$400.00 in any one calendar year;

(14) Subject to the requirements of subsection (c) of Code Section 20-3-250.6, any nonpublic medical school accredited by the Liaison Committee on Medical Education and a national or regional accrediting agency recognized by the United States Department of Education; and

(15) Any college or university that confers both associate and baccalaureate or higher degrees, that is accredited by the Southern Association of Colleges and Schools, College Division, that is operated in a proprietary status, that provides a \$200,000.00 surety bond, and that contributes to the Tuition Guaranty Trust Fund pursuant to Code Section 20-3-250.27.

(b) Except as otherwise provided in subsection (a) of this Code section, any nonpublic postsecondary educational institution whose students participate in either state or federally funded student financial aid programs is specifically covered by this part.

(c) A postsecondary educational institution which is also regulated pursuant to the provisions of Title 43 shall be exempted only from the provisions of paragraph (2) of subsection (b) of Code Section 20-3-250.5, subsections (a) and (b) of Code Section 20-3-250.6, and Code Section 20-3-250.11.

(d) A postsecondary educational institution which has been granted an exemption from provisions of this part pursuant to paragraph (6) of subsection (a) of this Code section shall subsequently submit an annual statement to the commission which affirms that the institution continues to meet the requirements for exempt status as listed in paragraph (6) of subsection (a) of this Code section. The statement shall be submitted using a form provided by the commission. The commission may request information on the form concerning the names of programs of study offered and the titles of degrees, diplomas, certificates, or other credentials conferred. Institutions which qualify for exempt status may include class components or subjects which are nonreligious in nature but relate to the church related work being performed by the institution. The commission may also authorize an annual visitation by the commission staff to the institution. (Code 1981, § 20-3-250.3, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1991, p. 980, § 1; Ga. L. 1991, p. 1165, § 1; Ga. L. 1992, p. 2198, § 1; Ga. L. 1992, p. 2615, § 2; Ga. L. 1994, p. 1282, § 2; Ga. L. 2002, p. 1414, § 2.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, “Code Section 20-3-250.27” was substituted for “Code Section 209-3-250.27” in paragraph (a)(15).

## OPINIONS OF THE ATTORNEY GENERAL

**Recognition by U.S. Department of Education.** — College or university which met the other requirements of paragraph (7) of former § 20-3-102 (see paragraph (a)(10) of O.C.G.A. § 20-3-250.3) was exempt from the provisions of O.C.G.A. Art. 7, Ch. 3, T. 20 upon being recognized for more than ten years by a national or regional accrediting agency recognized by the U.S. Department of Education. 1986 Op. Att’y Gen. No. U86-10.

**State board cannot apply statutory prohibitions to exempt institutions.** — In its administration of the Postsecondary Educational Authorization Act of 1978, the State Board of Education cannot apply the prohibitions of the Act to institutions which are exempted from the Act’s coverage. 1978 Op. Att’y Gen. No. 78-67.

**20-3-250.4. Nonpublic Postsecondary Education Commission; membership.**

(a) There is established the Nonpublic Postsecondary Education Commission consisting of 14 members who shall be appointed by the Governor and confirmed by the Senate. One member shall be appointed from each congressional district and the remaining members shall be appointed as at-large members. The first members appointed to the commission shall be appointed for terms of office beginning July 1, 1991, with four of those members to serve initial terms of one year each, four of those members to serve initial terms of two years each, and four of those members to serve initial terms of three years each. The initial terms of office shall be specified in the appointment. After these initial terms, members of the commission shall be appointed for terms of three years each. Each member shall serve for the term of office to which the person is appointed and until a successor is appointed, confirmed, and qualified. Members may be appointed to succeed themselves but shall not serve for more than two full consecutive terms.

(b) Two members of the commission shall be appointed to represent degree-granting nonpublic postsecondary educational institutions and two members shall be appointed to represent nonpublic postsecondary educational institutions which grant certificates only. The remaining members shall not be employed by or otherwise represent or have an interest in any nonpublic postsecondary educational institution.

(c) The commission shall elect from its members a chairperson, a vice chairperson, and such other officers as are considered necessary, each to serve for a one-year term. Officers may be elected to succeed themselves.

(d) Vacancies on the commission, except those caused by expiration of term, shall be filled by the Governor's appointing a successor who meets the requirement for the vacated position and who shall be confirmed by the Senate to serve for the remainder of the unexpired term of office.

(e) The commission shall meet at least quarterly on the call of the chairperson or upon the written petition of at least seven members of the commission.

(f) The members of the commission shall serve without compensation, but on presentation of a voucher authorized by the chairperson of the commission and approved by the executive director, each member shall be entitled to receive for each day's expenses incurred while carrying out official commission business the same daily expense allowance and travel or mileage allowance as that authorized for members of the General Assembly.



(g) A majority of the commission shall constitute a quorum for the conduct of business, but not less than seven voting members must concur in order for the commission to take official action.

(h) Any person appointed to the commission when the Senate is not in session may serve on the commission without Senate confirmation until the Senate acts on that appointment. (Code 1981, § 20-3-250.4, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1994, p. 1282, § 3; Ga. L. 2002, p. 1414, § 3.)

#### **20-3-250.5. Administration; general powers and duties.**

(a) The commission shall be assigned to the Georgia Student Finance Commission for administrative purposes only. The commission shall be a budget unit of the executive branch of the state government.

(b) The commission shall have the following powers and duties:

(1) To establish and promulgate standards, rules, regulations, and policies for carrying out the provisions of this part and for the orderly operation of the commission. To effectuate the purposes of this part, the commission may request from any department, division, board, bureau, commission, or other agency of the state, and such agency shall provide such information as will enable the commission to exercise properly its powers and perform its duties under this part;

(2) To establish minimum criteria in conformity with Code Section 20-3-250.6, including quality of education, ethical and business practices, health and safety, and fiscal responsibility which applicants for authorization to operate or for an agent's permit shall meet before such authorization or permit may be issued, and to continue such authorization or permit in effect. The criteria to be developed under this paragraph shall be such as will effectuate the purposes of this part but will not unreasonably hinder legitimate educational innovation;

(3) To negotiate and enter into interstate reciprocity agreements with similar agencies in other states and with the United States Department of Education if, in the judgment of the commission, such agreements are or will be helpful in effectuating the purposes of this part; but nothing contained in any such reciprocity agreement shall be construed as limiting the commission's or the executive director's powers, duties, and responsibilities with respect to investigating independently or acting upon any application for authorization to operate or for renewal of such authorization to operate a nonpublic postsecondary educational institution, or upon an application for issuance or renewal of any agent's permit, or with respect to the enforcement of any provision of this part, or of any of the rules or regulations promulgated under this part;

(4) To promulgate rules, regulations, and procedures necessary or appropriate for the conduct of its work and the implementation of this part, and to hold such hearings as it may deem advisable or as required by law in developing such rules, regulations, and procedures, or in aid of any investigation or inquiry;

(5) To delegate to the executive director such administrative powers and duties, in addition to those powers and duties of the executive director otherwise specified in this part, as may be reasonably necessary to carry out effectively this part and to establish such administrative organization and procedures as may be reasonably necessary to carry out this part;

(6) To exercise other powers and duties implied but not enumerated in this subsection but in conformity with this part which, in the judgment of the commission, are necessary in order to carry out this part;

(7) To submit annually to the House Higher Education Committee, to the House Education Committee and the Senate Education and Youth Committee, and to the Senate Higher Education Committee an annual written report summarizing the activities of the commission in regard to its responsibilities, activities, and administration of this part;

(8) To receive and hold title to property, equipment, money, and materials;

(9) To contract with other state, federal, or local public or private schools and other entities, individuals, or other legal entities for the provision of services or activities the commission deems necessary; and

(10) To establish and promulgate regulations for qualified proprietary institutions whose students receive tuition equalization grants in accordance with the criteria set forth in subparagraph (B) of paragraph (2) of Code Section 20-3-411.

(c) The executive director of the Nonpublic Postsecondary Education Commission shall be appointed by the Governor. The executive director shall administer the provisions of this part as provided in this subsection and as provided by rules, regulations, and policies of the commission. The executive director shall have the following powers and duties:

(1) To employ such personnel as may be necessary to carry out the provisions of this part and in connection therewith to develop job descriptions for such personnel;

(2) To receive, investigate as he may deem necessary, and act upon applications for authorization to operate nonpublic postsecondary educational institutions and upon applications for agents' permits;

(3) To maintain separate lists of degree-granting nonpublic postsecondary educational institutions, nondegree-granting postsecondary educational institutions, and agents authorized to operate in this state under this part. Such lists shall be available for the information of the public;

(4) To receive and cause to be maintained as a permanent file copies of academic records in conformity with Code Section 20-3-250.17;

(5) To investigate as he may deem necessary on his own initiative or in response to any complaint lodged with him any person, group, or entity subject to, or reasonably believed by him to be subject to, the jurisdiction of this part; and, in connection therewith, to subpoena any persons, books, records, or documents pertaining to such investigation, which subpoenas shall be enforceable by any court of this state; to require answers in writing under oath to questions propounded by him; and to administer an oath or affirmation to any person in connection with any investigation; and

(6) To administer compliance with this part in accordance with standards, rules, regulations, and policies of the commission.

(d) The commission shall establish separate divisions for degree-granting institutions and nondegree-granting institutions. All standards, rules, regulations, and policies adopted by the commission pursuant to this part shall identify the division to which such standards, rules, regulations, and policies are applicable.

(e) The commission shall be authorized to provide for biennial review of a previously authorized program of instruction at any institution which has received accreditation by a national or regional accrediting agency recognized by the United States Department of Education. The commission shall promulgate guidelines which shall be followed by the executive director in recommending such biennial program reviews to the commission. (Code 1981, § 20-3-250.5, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1992, p. 1657, § 2; Ga. L. 1995, p. 265, § 1; Ga. L. 1995, p. 728, §§ 2, 3; Ga. L. 2001, p. 4, § 20; Ga. L. 2009, p. 303, § 7/HB 117; Ga. L. 2011, p. 1, § 9/HB 326.)

**The 2011 amendment,** effective March 15, 2011, substituted “subparagraph (B)” for “subparagraph (C)” at the end of paragraph (b)(10). See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2009, p. 303, § 20/HB 117, not codified by the General Assembly, provides that: “This Act is intended to reflect the current internal organization of the Georgia Senate and

House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act.”

Ga. L. 2011, p. 1, § 17/HB 326, not codified by the General Assembly, provides, in part, that the 2011 amendment shall be applicable to postsecondary students beginning in the fall of 2011.



## OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarities of the statutory provisions, an opinion under former Code Section 20-3-103, which was subsequently repealed but was succeeded by provisions in this Code section, is included in the annotations for this Code section.

**Authority of Department of Education to take legal action for noncompliance.** — Department of Education

may take legal action against an institution found not to be in compliance with former Article 3 of this chapter (now O.C.G.A. § 20-3-250.1 et seq.) without specific approval of or direction from the State Board of Education so long as that authority has been delegated to the Department of Education. 1986 Op. Att'y Gen. No. U86-10 (decided under former § 20-3-103).

## RESEARCH REFERENCES

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 112 et seq.

**20-3-250.6. Minimum standards for educational institutions.**

(a) In establishing the criteria required by paragraph (2) of subsection (b) of Code Section 20-3-250.5, the commission shall observe and shall require compliance with the following minimum standards:

(1) A nonpublic postsecondary educational institution must be maintained and operated, or, in the case of a new institution, it must demonstrate that it can be maintained and operated in compliance with the following minimum standards:

(A) That the quality and content of each course or program of instruction, training, or study are such as may reasonably and adequately achieve the stated objective for which the course or program is offered;

(B) That the institution has adequate space, equipment, library and physical facilities, instructional materials, and personnel to provide education of good quality;

(C) That the education and experience qualifications of directors, administrators, supervisors, and instructors are such as may reasonably ensure that the students will receive education consistent with the objectives of the course or program of study and that each director and instructor shall satisfactorily meet educational qualifications and other requirements established by the commission;

(D) That the institution provides students and other interested persons with a catalog or other written description containing information describing the programs offered; program objectives; length of program; schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study;

cancellation and refund policies consistent with standards adopted by the commission; prior year's enrollment, graduation, and job placement rates; and such other material facts concerning the institution and the program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein, together with any other disclosures specified by the executive director or defined in the rules and regulations of the commission; and that such information is provided to prospective students prior to enrollment;

(E) That upon satisfactory completion of training, the student is given appropriate educational credentials by such institution indicating that such course or courses of instruction or study have been satisfactorily completed by said student;

(F) That adequate records are maintained by the institution to show attendance, progress, or grades and that satisfactory standards are enforced relating to attendance, progress, and performance;

(G) That the institution is maintained and operated in compliance with all pertinent ordinances and laws, including rules and regulations, relative to the safety and health of all persons upon the premises;

(H) That the institution is financially sound and capable of fulfilling its commitments to students;

(I) That neither the institution nor its agents engage in advertising, sales, collection, credit, or other practices of any type which are false, deceptive, misleading, or unfair;

(J) That the chief executive officer, trustees, directors, owners, administrators, supervisors, staff, and instructors are of good reputation and character and that each institution has an education director who meets the requirements established by the commission for such position which requirements shall be substantially related to the predominant course offerings at that institution;

(K) That the student housing owned, maintained, or approved by the institution, if any, is appropriate, safe, and adequate and meets all local fire, safety, and health codes;

(L) That the institution has and maintains a reasonable and proper policy, consistent with standards adopted by the commission, for the refund of the unused portion of tuition, fees, housing or dormitory fees, and any other charges in the event a student enrolled by the institution fails to begin a course or withdraws or is discontinued therefrom prior to completion, which policy shall take

into account those costs to the institution that are not diminished by the failure of the student to enter or complete the course of instruction;

(M) That the institution maintains a policy of allowing any student a minimum of 72 hours from the date of the contract or agreement to cancel any contract or rescind any agreement to become a student at the institution and that in the event of any such cancellation or rescission, the student shall receive a refund of the total tuition and fees, if any, paid to the institution at the time of or in connection with the execution of the contract or agreement and that such policy shall be a clearly stated part of any written contract or agreement required of students attending the institution; and

(N) That the institution posts continuously in a conspicuous place a notice, in such form as required by the commission, which sets forth the procedures for filing a complaint with the commission for any alleged violation of this part.

(2) An applicant for an agent's permit shall be an individual of good reputation and character and shall represent only a nonpublic postsecondary educational institution or institutions which meet the minimum standards established in this Code section and the criteria established under paragraph (2) of subsection (b) of Code Section 20-3-250.5.

(b) In lieu of the criteria set forth in subsection (a) of this Code section, or in addition thereto, the executive director, for good cause shown and with the advice of the commission, may amend, modify, substitute, or alter the terms of such criteria as necessary and advisable because of the specialized nature and objective of the operation of the postsecondary educational institution.

(c) Institutions otherwise exempt from certain provisions of this part under paragraphs (7), (10), (11), (12), and (14) of subsection (a) of Code Section 20-3-250.3 shall be required to meet the standards of financial soundness and being capable of fulfilling commitments to students as provided in subparagraph (a)(1)(H) of this Code section, and, because of such requirement, each such institution shall provide the commission with audited financial statements as performed by an independent certified public accountant and at such times as the commission shall require. The commission may impose a fee to be paid by such institutions to offset the cost of receiving and reviewing such audited financial statements. Institutions otherwise exempt from certain provisions of this part under subsection (c) of Code Section 20-3-250.3 shall be required to submit annual financial reports to the commission when applying for annual renewal of exemption or authorization using the



reporting format provided by the commission. In addition thereto, institutions otherwise exempt from certain provisions of this part under paragraph (10) of subsection (a) of Code Section 20-3-250.3 shall be subject to the requirements of Code Sections 20-3-250.8, 20-3-250.10, and 20-3-250.27. The reports to the Governor and to the General Assembly required by subsection (h) of Code Section 20-3-250.27 shall include a summary of the commission's findings from its review of audited financial statements required by this subsection.

(d) The commission shall be authorized to adopt rules pertaining to the content and format of financial reports to be submitted by postsecondary educational institutions applying for authorization to operate in this state. (Code 1981, § 20-3-250.6, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1991, p. 687, § 2; Ga. L. 1992, p. 1657, § 3; Ga. L. 1992, p. 2615, § 3; Ga. L. 1993, p. 91, § 20; Ga. L. 1994, p. 1282, § 4.)

#### OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarities of the statutory provisions, an opinion under former O.C.G.A. § 20-3-104, which was subsequently repealed but was succeeded by provisions in this Code section, is included in the annotations for this Code section.

**Reasonable changes in brochure's tuition and graduation requirements**

**allowed.** — Reasonable changes in tuition charges and graduation requirements by a private college that has reserved the right to do so in the college's brochure do not violate the Postsecondary Educational Authorization Act of 1978 (former Article 3 of this chapter, now this part). 1984 Op. Att'y Gen. No. 84-35 (decided under former O.C.G.A. § 20-3-104).

#### RESEARCH REFERENCES

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 3. 78 C.J.S., Schools and School Districts, § 103 et seq.

#### **20-3-250.7. Prohibited activities of persons, agents, groups, or entities.**

(a) No person, agent, group, or entity of whatever kind, alone or in concert with others, shall:

(1) Operate in this state a nonpublic postsecondary educational institution or conduct postsecondary activities in this state unless issued a current certificate of valid authorization by the executive director;

(2) Offer postsecondary instruction leading to a postsecondary degree or certificate to Georgia residents from a location outside this state by correspondence or any telecommunications or electronic media technology unless issued a current certificate of valid authorization;

(3) Solicit prospective students without being authorized by the executive director to do so and without being bonded if required to do so by Code Section 20-3-250.10;

(4) Offer, as or through an agent, enrollment or instruction in, or the granting of educational credentials from, a postsecondary educational institution not exempted from this part, whether such institution is within or outside this state, unless such agent is a natural person and has a currently valid agent's permit issued pursuant to this part; or accept contracts or enrollment applications from an agent who does not have a current permit as required by this part; but the commission may promulgate rules and regulations to permit the rendering of legitimate public information services without such permit;

(5) Make or cause to be made any statement or representation, oral, written, or visual, in connection with the offering or publicizing of a course, if such person knows or reasonably should have known the statement or representation to be false, deceptive, substantially inaccurate, or misleading;

(6) Instruct or educate, or offer to instruct or educate, including advertising or soliciting for such purpose, enroll or offer to enroll, contract or offer to contract with any person for such purpose, or award any educational credential, or contract with any institution or party to perform any such act, in this state, whether such person, agent, group, or entity is located within or outside this state, unless such person, agent, group, or entity observes and is in compliance with the minimum standards set forth in Code Section 20-3-250.6, the criteria established by the commission pursuant to paragraph (2) of subsection (b) of Code Section 20-3-250.5, and the rules and regulations adopted by the commission;

(7) Promise or guarantee employment utilizing information, training, or skill purported to be provided or otherwise enhanced by a course, unless the promisor or guarantor offers the student or prospective student a bona fide contract of employment agreeing to employ said student or prospective student for a specified period of time in a business or other enterprise regularly conducted by him or her where such information, training, or skill is a normal condition of employment;

(8) Do any act constituting part of the conduct or administration of a course or the obtaining of students thereof, if such person knows or reasonably should know that any phase or incident of the conduct or administration of the course is being carried on by the use of fraud, deception, other misrepresentation, or by any person soliciting students without a permit; or

(9) Grant, or offer to grant, postsecondary degrees, diplomas, certificates, or honorary or unearned degrees without authorization to do so from the commission.

(b) No person, agent, group, or entity of whatever kind shall use the term “college” or “university” without authorization to do so from the commission unless it was doing so prior to July 1, 1985, or is otherwise authorized to do so under this part. Nonpublic postsecondary educational institutions operating in this state which are otherwise exempted from this part pursuant to Code Section 20-3-250.3 shall be subject to the provision of this subsection.

(c) No person, firm, or institution shall sell, barter, or exchange for any consideration or attempt to sell, barter, or exchange for any consideration any postsecondary degree, diploma, or certificate.

(d) No person, firm, or institution shall use, or attempt to use, in connection with any business, trade, profession, or occupation any postsecondary certificate, degree, or certification of degree or degree credit including, but not limited to, a transcript of course work, which the person, firm, or institution knows was fraudulently issued, obtained, forged, or materially altered.

(e) Any contract entered into with any person for any course of instruction by or on behalf of any owner, employee, agent, or other representative of a nonpublic postsecondary educational institution subject to this part to which a certificate of authorization has not been issued shall be unenforceable in any action brought thereon.

(f) Any person, group, or entity or any owner, officer, agent, or employee thereof who willfully violates this Code section, Code Section 20-3-250.8, or willfully fails or refuses to deposit with the executive director the records required by Code Section 20-3-250.17 shall be guilty of a misdemeanor. Each day's failure to comply with such Code sections shall be a separate violation. Such criminal sanctions may be imposed by a court of competent jurisdiction in an action brought by the Attorney General or a district attorney pursuant to Code Section 20-3-250.18. (Code 1981, § 20-3-250.7, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1992, p. 1657, § 4; Ga. L. 1994, p. 1282, § 5.)

#### OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarities of the statutory provisions, an opinion under former Ga. L. 1972, p. 156, which was subsequently repealed but was succeeded by provisions in this Code section, is included in the annotations for this Code section.

**State board cannot apply statutory**

**prohibitions to exempt institutions.**

— In its administration of former Article 3, the State Board of Education could not apply the prohibitions of former Ga. L. 1972, p. 156 (which was substantially similar to this section) to institutions which were exempted from the law's coverage (see O.C.G.A. § 20-3-250.3). 1978 Op.



Att'y Gen. No. 78-67 (decided under former Ga. L. 1972, p. 156).

### RESEARCH REFERENCES

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 3. 78 C.J.S., Schools and School Districts, § 103 et seq.

### **20-3-250.8. Application to operate or conduct postsecondary activities.**

(a) Each nonpublic postsecondary educational institution desiring to operate or conduct postsecondary activities in this state shall make application to the commission, upon forms to be provided by the commission. Such application shall be accompanied by a catalog or other written description published, or proposed to be published, by the institution, containing the information specified in subparagraph (a)(1)(D) of Code Section 20-3-250.6, including information required by rules and regulations of the commission. Such application shall also be accompanied by evidence of a surety bond if required by Code Section 20-3-250.10 and subsection (c) of Code Section 20-3-250.27 and shall be accompanied by payment of the fees specified in Code Section 20-3-250.11; provided, however, that when making application to the commission for authorization to operate, those institutions exempt from certain provisions of this part pursuant to the provisions of paragraph (10) of subsection (a) of Code Section 20-3-250.3 or subsection (c) of Code Section 20-3-250.3 shall be required to submit only those documents pertaining to provisions of this part from which such institutions are not exempt.

(b) A nonpublic postsecondary educational institution shall not operate or conduct postsecondary activities in any building in which that institution did not previously operate or conduct postsecondary activities unless the institution obtains authorization to operate or conduct those activities in that building as a branch facility. An application for authorization to operate any branch facility shall be accompanied by catalogs, other written documents, evidence of bond, and payment of fees as required for an initial application pursuant to subsection (a) of this Code section.

(c) Following review of such application and any further information submitted by the applicant or required by the executive director, an on-site inspection of the physical facility at which the institution will be operating, if located in this state, and such investigation of the applicant as the executive director may deem necessary or appropriate, the executive director shall either grant or deny authorization to operate to the applicant. A grant of authorization to operate may be on such terms and conditions as the executive director may specify.

(d) The authorization to operate shall be in a form recommended and approved by the commission and shall state in a clear and conspicuous manner at least the following information:

- (1) The date of issuance, effective date, and term of authorization;
- (2) The correct name and address of the institution so authorized;
- (3) The authority for authorization and conditions thereof;

(4) Any limitation of the authorization, as deemed necessary by the executive director;

(5) The signature of the executive director or such person as may have been designated by the executive director; and

(6) Any other fair and reasonable representations consistent with this part and deemed necessary by the executive director.

(e) The term for which authorization is given shall not extend for more than one year and may be issued for a lesser period of time.

(f) The authorization to operate shall be issued to the owner or governing body of the applicant institution and shall be nontransferable. In the event of a change in ownership of the institution, a new owner or governing body must, within ten days after the change in ownership, apply for a new authorization to operate; and in the event of failure to do so, the institution's authorization to operate shall terminate. Application for a new authorization to operate by reason of change in ownership of the institution shall, for purposes of subsection (b) of Code Section 20-3-250.12, be deemed an application for renewal of the institution's authorization to operate.

(g) At least 60 days prior to the expiration of an authorization to operate, the institution shall complete and file with the executive director an application form for renewal of its authorization to operate. Such renewal application shall be reviewed and acted upon as provided in subsections (c) through (f) of this Code section.

(h) An institution not yet in operation when its application for authorization to operate is filed may not begin operation or conduct any postsecondary activities until receipt of authorization.

(i) Each nonpublic postsecondary educational institution which has been granted an authorization to operate or conduct postsecondary activities in this state shall obtain authorization from the executive director before it offers any course not offered by the institution at the time its most recent authorization was granted. The commission by regulation shall establish procedures and standards for authorization of such additional course offerings. (Code 1981, § 20-3-250.8, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1992, p. 1657, § 5; Ga. L. 1994, p. 1282, § 6.)

**RESEARCH REFERENCES**

**C.J.S.** — 14A C.J.S., Colleges and Universities, §§ 3, 4. 78 C.J.S., Schools and School Districts, § 103 et seq.

**20-3-250.9. Application by persons to solicit or perform services of agent.**

(a) Each person desiring to solicit or perform the services of an agent in this state shall make application to the executive director upon forms to be provided by the commission. Such application shall be accompanied by evidence of the good reputation and character of the applicant in a form to be prescribed by the commission and shall state the institution or institutions which the applicant intends to represent. An agent representing more than one institution must obtain a separate agent's permit for each institution represented, but when an agent represents institutions having a common ownership, only one agent's permit shall be required with respect to such institutions. No postsecondary educational institution shall employ or otherwise retain the services of an agent who has not been issued an agent's permit by the commission. In the event any institution which the applicant intends to represent does not have authorization to operate in this state, such application shall be accompanied by the information required of institutions making application for such authorization. Such application for an agent's permit shall also be accompanied by payment of the agent's permit fee specified by Code Section 20-3-250.11.

(b) Following review of such application and any further information submitted by the applicant or required by the executive director and such investigation of the applicant as the executive director may deem necessary or appropriate, the executive director shall either grant or deny an agent's permit to the applicant.

(c) The agent's permit shall be in a form approved by the commission and shall state in a clear and conspicuous manner at least the following information:

- (1) The date of issuance, effective date, and term;
- (2) The correct name and address of the agent; and
- (3) The institution or institutions which such agent is authorized to represent.

(d) The term for which an agent's permit is issued shall not extend for more than one year and may be issued for a lesser period of time.

(e) At least 60 days prior to the expiration of an agent's permit, the agent shall complete and file with the executive director an application



form for renewal of the permit. Such renewal application shall be reviewed and acted upon as provided in subsections (b) through (d) of this Code section. (Code 1981, § 20-3-250.9, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1991, p. 687, § 3; Ga. L. 1992, p. 1657, § 6.)

**Code Commission notes.** — Pursuant “the” was deleted preceding “agent’s” in to Code Section 28-9-5, in 1992, a second the last sentence of subsection (a).

RESEARCH REFERENCES

**Am. Jur. 2d.** — 51 Am. Jur. 2d, Licenses and Permits, §§ 7, 9, 45, 50, 51. **C.J.S.** — 53 C.J.S., Licenses, §§ 8 et seq., 33, 58 et seq.

**20-3-250.10. Surety bonds; filing; amount; release of surety; suspension upon release of surety; property bonds.**

(a) At the time an initial application or application for a branch facility is made for authorization to operate, the executive director shall require the nonpublic postsecondary educational institution making such application to file with the executive director a good and sufficient surety bond in such sum as determined by subsection (b) of this Code section. Such bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond shall be conditioned to provide indemnification to the Tuition Guaranty Trust Fund established in Code Section 20-3-250.27 and to any student or enrollee or that person’s parent or guardian or class thereof determined to have suffered loss or damage as a result of any act or practice which is a violation of this part or of rules and regulations promulgated pursuant thereto by such nonpublic postsecondary educational institution and that the bonding company shall pay any final, nonappealable judgment rendered by the commission or any court of this state having jurisdiction, upon receipt of written notification thereof. Regardless of the number of years that such bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum of the bond. The bond may be continuous.

(b)(1) Except as otherwise provided in paragraph (2) of this subsection, the minimum amount of the bond required by subsection (a) of this Code section shall be based on the gross tuition of the nonpublic postsecondary educational institution during the previous year or on the estimated gross tuition for the current year, whichever is larger, and shall be as follows:

| <u>Gross Tuition</u>          |  | <u>Minimum Bond</u> |
|-------------------------------|--|---------------------|
| \$ 0.00 — \$ 50,000.00 .....  |  | \$ 20,000.00        |
| 50,001.00 — 100,000.00 .....  |  | 30,000.00           |
| 100,001.00 — 200,000.00 ..... |  | 50,000.00           |

|                               |            |
|-------------------------------|------------|
| 200,001.00 — 300,000.00 ..... | 75,000.00  |
| 300,001.00 — 400,000.00 ..... | 100,000.00 |
| 400,001.00 — 500,000.00 ..... | 150,000.00 |
| 500,001.00 and over .....     | 200,000.00 |

(2) As an alternative to the amount of the bond determined under paragraph (1) of this subsection, the nonpublic postsecondary educational institution shall have the option of filing a bond in an amount equal to the total income collected by the institution during the previous fiscal year or the estimated total income for the current year, whichever is larger; provided, however, the amount so determined shall be rounded off to the next highest \$1,000.00.

(c) If the bond filed with the initial application to operate remains in effect, it shall be sufficient when an application is made for the renewal of authorization to operate, unless the amount of the bond must be increased because of increased gross tuition to comply with requirements of subsection (b) of this Code section.

(d) The surety bond to be filed under this Code section shall cover the period of the authorization to operate except when a surety shall be released as provided in this Code section. A surety on any bond filed under this Code section may be released therefrom after such surety shall serve written notice thereof on the executive director at least 90 days prior to such release; but such release shall not discharge or otherwise affect any claim theretofore or thereafter filed by a student or enrollee or that person's parent or guardian or class thereof for loss or damage resulting from any act or practice which is a violation of this part or of rules and regulations promulgated pursuant thereto alleged to have occurred while such bond was in effect or from an institution's ceasing operations during the term for which tuition has been paid while such bond was in force.

(e) Authorization for an institution to operate shall be suspended by operation of law when such institution is no longer covered by a surety bond as required by this Code section, but the executive director shall cause such institution to receive at least 30 days' written notice prior to the release of the surety to the effect that such authorization or permit shall be suspended by operation of law until another surety bond shall be filed in the same manner and like amount as the bond being terminated.

(f) In lieu of the surety bond provided for in subsections (a) and (b) of this Code section, the commission by rule or regulation may authorize the executive director to accept a property bond when a principal of the nonpublic postsecondary educational institution owns property within the State of Georgia with sufficient equity therein to satisfy the

requirements of subsection (b) of this Code section. (Code 1981, § 20-3-250.10, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1991, p. 687, § 4; Ga. L. 1992, p. 1657, § 7; Ga. L. 1994, p. 1282, § 7; Ga. L. 1995, p. 728, § 4; Ga. L. 2002, p. 1414, § 4.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1995, “nonpublic postsecondary educational institution” was substituted for “Nonpublic Postsecondary Educational Institutions” in subsection (f).

OPINIONS OF THE ATTORNEY GENERAL

**Editor’s notes.** — In light of the similarities of the statutory provisions, decisions under former Ga. L. 1978, p. 1571 et seq., which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Certificate of deposit not accepted in lieu of surety bond.** — Executive director is not authorized to accept a certificate of deposit in lieu of a surety bond from a nonpublic postsecondary institution. In addition, if the commission autho-

rizes the executive director to substitute a property bond in lieu of a surety bond by rule or regulation, the commission may require the owner of the property to provide proof of equity and other assurances of ownership. 1991 Op. Att’y Gen. U91-21.

**Board without authority to waive fee and bond requirements** for any institution which is otherwise subject to the law’s coverage. 1980 Op. Att’y Gen. No. 80-33 (decided under former Ga. L. 1978, p. 1571 et seq.).

RESEARCH REFERENCES

**Am. Jur. 2d.** — 51 Am. Jur. 2d, Licenses and Permits, § 55. 74 Am. Jur. 2d, Suretyship, § 28. **C.J.S.** — 53 C.J.S., Licenses, § 67 et seq.

20-3-250.11. Collection of fees established by commission.

(a) Fees shall be collected by the executive director in such amounts as shall be established by the commission. The commission is authorized to establish the following fees and fee schedules:

- (1) Separate initial application and renewal fee schedules for degree-granting and nondegree-granting nonpublic postsecondary educational institutions based upon the commission’s relative cost of performing its duties and responsibilities with regard to those categories of institutions and, within those categories, based upon actual or projected gross tuition of those institutions;
- (2) Initial and renewal fees for agents’ permits;
- (3) Special fees for the evaluation of postsecondary educational institutions;
- (4) Fees authorized pursuant to Code Section 20-3-250.27; and
- (5) Special fees to offset other identified administrative costs.



All fees collected pursuant to this part, except fees collected pursuant to Code Section 20-3-250.27, shall be deposited in the state treasury to the credit of the general fund, and no fees collected under this part shall be subject to refund, except as provided in Code Section 20-3-250.27. Except as otherwise indicated in this part, the fees to be collected by the commission under this part shall accompany an application for authorization to operate or an agent's permit.

(b) The commission will pay all costs for evaluation committees that may be necessary to implement this part. (Code 1981, § 20-3-250.11, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1992, p. 1005, § 1; Ga. L. 1992, p. 1657, § 8; Ga. L. 1994, p. 1282, § 8.)

### OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the statutory provisions, an opinion under former Ga. L. 1978, p. 1571 et seq., which was subsequently repealed but was succeeded by provisions in this Code section, is included in the annotations for this Code section.

**Board without authority to waive fee and bond requirements** of former article 3 for any institution which is otherwise subject to the article's coverage. 1980 Op. Att'y Gen. No. 80-33 (decided under former Ga. L. 1978, p. 1571 et seq.).

### RESEARCH REFERENCES

**C.J.S.** — 53 C.J.S., Licenses, § 105 et seq.

### 20-3-250.12. Denial of application for agent's permit.

(a) If the executive director, upon review and consideration of an application for authorization to operate or for an agent's permit or for renewal thereof, shall determine that the applicant fails to meet the criteria established as provided in this part, the executive director shall so notify the applicant, setting forth the reasons therefor in writing, and shall deny the application.

(b) The executive director may grant to an applicant for renewal an extension of time of reasonable duration in which the applicant may eliminate the reason or reasons for denial contained in the statement of denial, if the applicant has demonstrated to the satisfaction of the executive director its or his desire to meet the requirements of Code Section 20-3-250.6 and the criteria established pursuant to paragraph (2) of subsection (b) of Code Section 20-3-250.5, and if in the judgment of the executive director it would be reasonably possible for the applicant to meet such requirements and criteria within such time.

(c) In the event the executive director denies an application for an agent's permit or for renewal thereof, he shall notify the institution or institutions which such agent represented or proposed to represent,

according to the records of the commission, including the reasons therefor. (Code 1981, § 20-3-250.12, enacted by Ga. L. 1990, p. 1166, § 3.)

RESEARCH REFERENCES

**Am. Jur. 2d.** — 51 Am. Jur. 2d, Licenses and Permits, § 37.  
**C.J.S.** — 14A C.J.S., Colleges and Universities, §§ 3; 4. 53 C.J.S., Licenses, §§ 38, 39. 78 C.J.S., Schools and School Districts, § 103 et seq.

**20-3-250.13. Revocation of agent’s permit; conditional permits; hearing.**

(a) An authorization to operate or an agent’s permit may be revoked or made conditional after its issuance if the executive director has reasonable cause to believe that the holder of such authorization or permit has violated or is violating this part or any rules and regulations promulgated pursuant thereto. Prior to such revocation or imposition of condition, the executive director shall notify the holder of the authorization or permit in writing of the impending action, setting forth the grounds for the action contemplated to be taken and advising the holder of a permit that if a hearing is requested, in writing, within ten days of receipt of such notice, the executive director shall set a time and place for a hearing at which the holder of the authorization or permit may be heard in response to the allegation of noncompliance with this part or rules and regulations promulgated pursuant to this part.

(b) If a hearing is requested as provided in subsection (a) of this Code section, such hearing shall be conducted as provided in subsection (d) of Code Section 20-3-250.15, and the holder of the authorization or permit shall have the rights set forth in that Code section. The decision of the commission shall be made as provided in subsection (e) of Code Section 20-3-250.15 and shall be deemed final, subject to the right of judicial review provided for by Code Section 20-3-250.16. In the event an agent’s permit is revoked or a condition is imposed thereon, the executive director shall notify the institution or institutions which such agent was permitted to represent, as shown in the records of the commission, in addition to the notice required to be given to the agent and any other parties to the hearing. (Code 1981, § 20-3-250.13, enacted by Ga. L. 1990, p. 1166, § 3.)

RESEARCH REFERENCES

**Am. Jur. 2d.** — 51 Am. Jur. 2d, Licenses and Permits, §§ 56, 60 et seq.  
**C.J.S.** — 14A C.J.S., Colleges and Universities, §§ 3, 4. 53 C.J.S., Licenses, § 50 et seq. 78 C.J.S., Schools and School Districts, § 103 et seq.

**20-3-250.14. Filing complaint against institution or agent.**

(a) Any person claiming damage or loss as a result of any act or practice by a nonpublic postsecondary educational institution or its agent, or both, which is a violation of this part or of the rules and regulations promulgated pursuant thereto may file with the executive director a verified complaint against such institution or against its agent, or both. A complaint shall be filed with the executive director within a reasonable period of time, as determined by regulations of the commission, after the event giving rise to the complaint. The complaint shall set forth the alleged violation and shall contain such other information as may be required by the commission. A complaint may also be filed with the executive director by the commission's representatives or by the Attorney General. A complainant may also file with the executive director as a representative of a class of complainants.

(b) The executive director shall investigate any such complaint and may, at his discretion, attempt to effectuate a settlement by persuasion and conciliation. The executive director may consider a complaint after ten days' written notice sent by registered or certified mail or statutory overnight delivery, return receipt requested, to such institution or to such agent, or both, as appropriate, giving notice of a time and place for hearing thereon. Such hearing shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c) If, based upon all the evidence at a hearing, the executive director shall find that a nonpublic postsecondary educational institution or its agent, or both, have engaged in or are engaging in any act or practice which violates this part or the rules and regulations promulgated pursuant thereto, the executive director shall issue and cause to be served upon such institution or agent, or both, an order requiring such institution or agent, or both, to cease and desist from such act or practice. Additionally, if the executive director shall find that the complainant or class of complainants has suffered loss or damage as a result of such act or practice, the executive director may, at his discretion, award the complainant or class of complainants full or partial restitution for such damage or loss and may impose the penalties provided for in Code Section 20-3-250.21. The executive director may also, as appropriate, based on his own investigation or the evidence adduced at such hearing or on the basis of such investigation and evidence, commence an action to revoke an institution's authorization to operate or revoke an agent's permit. (Code 1981, § 20-3-250.14, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1991, p. 687, § 5; Ga. L. 2000, p. 1589, § 3.)



**Editor's notes.** — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the Act was applicable to notices delivered on or after July 1, 2000.

### RESEARCH REFERENCES

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 3. 78 C.J.S., Schools and School Districts, § 103 et seq.

#### **20-3-250.15. Hearing and review by commission of denial of permit.**

(a) Any person aggrieved by a decision of the executive director respecting denial of an authorization to operate or of an agent's permit or the placing of conditions thereon, whether on initial application or on application for renewal, or by a decision of the executive director revoking an institution's authorization to operate or an agent's permit and any person aggrieved by the imposition of a penalty by the executive director under Code Section 20-3-250.21 shall have the right to a hearing and review of such decision by the commission as provided in this Code section.

(b) If, upon written notification of any such action taken by the executive director, the aggrieved party desires a hearing and review, such party shall notify the executive director, in writing, within ten days after the giving of notice of such action; otherwise such action shall be deemed final.

(c) Upon receiving such notice from the aggrieved party, the executive director, after consultation with the commission, shall fix the time and place for a hearing by the commission within 30 days and shall notify the aggrieved party thereof.

(d) At such hearing the party may employ counsel, shall have the right to hear the evidence upon which the action is based, and may present evidence in opposition or in extenuation. The hearing shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any member of the commission may preside except where a clear conflict of interest may be demonstrated.

(e) A decision of the commission following a hearing, or on expiration of the time for demand of a hearing if no such demand is filed, shall be deemed final, subject to the right of judicial review provided for by Code Section 20-3-250.16. All matters presented by hearing as provided in this Code section shall be acted upon promptly by the commission, and the commission shall notify all parties in writing of its decision, which shall include a statement of findings and conclusions upon all material issues of fact, law, or discretion presented at the hearing and the

appropriate rule, order, sanction, relief, or denial thereof. (Code 1981, § 20-3-250.15, enacted by Ga. L. 1990, p. 1166, § 3.)

#### RESEARCH REFERENCES

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 103 et seq., 112 et seq.

#### **20-3-250.16. Judicial review of final commission action.**

(a) Any person aggrieved or adversely affected by any final action of the commission may obtain judicial review of such action as provided in this Code section.

(b) An action for judicial review may be commenced in any court of competent jurisdiction within 30 days after the commission's action becomes effective.

(c) Upon a finding that irreparable injury would otherwise result, the commission, upon application therefor, shall postpone the effective date of its action pending judicial review, or the reviewing court, upon application therefor and upon such terms and upon such security, if any, as the court shall find necessary, shall issue appropriate process to postpone the effective date of the commission's action or to preserve the rights of the parties pending conclusion of the review proceedings.

(d) The record on review, unless otherwise stipulated by the parties, shall include the original or certified copies of all pleadings, applications, evidence, exhibits, and other papers presented to or considered by the commission and the decision, findings, and action of the commission. As to alleged procedural irregularities, evidence may be taken independently by the court.

(e) If the court finds no error, it shall affirm the commission's action. If it finds that such action was:

- (1) Arbitrary or capricious;
- (2) A denial of a statutory right;
- (3) Contrary to constitutional right, power, privilege, or immunity;
- (4) In excess of statutory jurisdiction, authority, purposes, or limitation;
- (5) Not in accord with the procedures or procedural limitations of this part or otherwise required by law;
- (6) An abuse or clearly unwarranted exercise of discretion, unsupported by substantial evidence when the record is considered as a whole; or

(7) Otherwise contrary to law,

then the court shall hold unlawful and set aside the commission's action and afford such relief as may be appropriate.

(f) The decision of the trial court shall be subject to appellate review in the same manner and with the same effect as in appeals from a final judgment or decree in any other civil action. (Code 1981, § 20-3-250.16, enacted by Ga. L. 1990, p. 1166, § 3.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 80 et seq.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 112 et seq.

#### **20-3-250.17. Discontinuation of operations of nonpublic postsecondary educational institution.**

In the event any nonpublic postsecondary educational institution now or hereafter operating in this state proposes to discontinue its operations, the chief administrative officer, by whatever title designated, of such institution shall cause to be filed with the executive director the original or legible true copies of all such academic records of such institution as may be specified by the executive director. Such records shall include, at a minimum, such information as is customarily required by colleges or other postsecondary educational institutions when considering students for transfer or advanced study and, as a separate document, the academic record of each former student. In the event it appears to the executive director that any such records of an institution discontinuing its operations are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the executive director, the executive director may, with court order, seize and take possession of such records, subject to the confidentiality accorded normal school records. The executive director shall maintain or cause to be maintained a permanent file of such records coming into his or her possession. (Code 1981, § 20-3-250.17, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1994, p. 1282, § 9.)

#### RESEARCH REFERENCES

**C.J.S.** — 14A C.J.S., Colleges and Universities, § 3. 78 C.J.S., Schools and School Districts, § 103 et seq.

#### **20-3-250.18. Initiation of court proceedings by executive director.**

(a) The Attorney General of this state or the district attorney of any judicial circuit in which a nonpublic postsecondary educational institu-



tion or an agent thereof is found, at the request of the executive director or on his own motion, may bring any appropriate action or proceeding in any court of competent jurisdiction for the enforcement of this part.

(b) Whenever it shall appear to the executive director that any person, agent, group, or entity is about to violate or has been violating any of the provisions of this part or any of the lawful rules, regulations, or orders of the executive director, the executive director may, on his own motion or on the written complaint of any person, file a petition for injunction in the name of the commission in any court of competent jurisdiction in this state against such person, group, or entity for the purpose of enjoining such violation or for an order directing compliance with this part and all rules, regulations, and orders issued pursuant thereto. It shall not be necessary that the executive director allege or prove that he has no adequate remedy at law. The right of injunction provided in this Code section shall be in addition to any other legal remedy which the executive director has and shall be in addition to any right of criminal prosecution provided by law, but the executive director shall not obtain a temporary restraining order without notice to the person, group, or entity affected. The existence of an action of the executive director with respect to alleged violations of this part shall not operate as a bar to an action for injunctive relief pursuant to this Code section. (Code 1981, § 20-3-250.18, enacted by Ga. L. 1990, p. 1166, § 3.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 42 Am. Jur. 2d, Injunctions, §§ 25, 228, 229. 51 Am. Jur. 2d, Licenses and Permits, § 74. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 92 et seq.

**C.J.S.** — 43 C.J.S., Injunctions, § 11. 43A C.J.S., Injunctions, §§ 189, 190. 81A C.J.S., States, § 311.

#### 20-3-250.19. Jurisdiction.

Any nonpublic postsecondary educational institution not exempt from this part, whether or not a resident of or having a place of business in this state, which conducts postsecondary activities or which instructs or educates or offers to instruct or educate, enrolls or offers to enroll, or contracts or offers to contract to provide instructional or educational services in this state, whether such instruction or services are provided in person or by correspondence or by telecommunications or electronic media technology, to a resident of this state or which offers to award or awards any educational credentials to a resident of this state submits such institution and, if a natural person, his personal representative to the jurisdiction of the courts of this state concerning any cause of action arising therefrom and for the purpose of enforcement of this part by injunction pursuant to Code Section 20-3-250.18. Service of process

upon any such institution subject to the jurisdiction of the courts of this state may be made by personally serving the summons upon the defendant within or outside this state, in the manner prescribed by Chapter 11 of Title 9, the "Georgia Civil Practice Act," with the same force and effect as if the summons had been personally served within this state. Nothing contained in this Code section shall limit or affect the right to serve any process as prescribed by Chapter 11 of Title 9. (Code 1981, § 20-3-250.19, enacted by Ga. L. 1990, p. 1166, § 3.)

#### **20-3-250.20. Funding for administration of part.**

The commission, through the executive director, shall request funds for the administration of this part, and the General Assembly shall appropriate such funds as deemed adequate and necessary. (Code 1981, § 20-3-250.20, enacted by Ga. L. 1990, p. 1166, § 3.)

#### **20-3-250.21. Fines for violations.**

Any person, group, or entity or any owner, officer, agent, or employee thereof who shall willfully violate Code Section 20-3-250.7 or 20-3-250.8 or who shall fail or refuse to deposit with the executive director the records required by Code Section 20-3-250.17 shall be subject to a civil penalty not to exceed \$1,000.00 for each violation. Each day's failure to comply with such Code sections shall be a separate violation. Such fine may be imposed by the executive director in an administrative proceeding or by any court of competent jurisdiction. The commission shall adopt a schedule of regularly imposed fines for violations of this part and shall have such schedule published by the executive director. (Code 1981, § 20-3-250.21, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1991, p. 687, § 6.)

### **RESEARCH REFERENCES**

**Am. Jur. 2d.** — 51 Am. Jur. 2d, Licenses and Permits, § 74 et seq.

**C.J.S.** — 53 C.J.S., Licenses, § 87 et seq..

#### **20-3-250.22. Prohibited activities; violation.**

Reserved. Repealed by Ga. L. 1994, p. 1282, § 10, effective July 1, 1994.

**Editor's notes.** — This Code section was based on Ga. L. 1990, p. 1166, § 3.

**20-3-250.23. Validity of certificates of authorization previously issued.**

All certificates of authorization previously issued under either Article 3 of this chapter, the "Postsecondary Educational Authorization Act of 1978," or Article 4 of Chapter 4 of this title, the "Georgia Proprietary School Act," as such articles and provisions existed immediately prior to July 1, 1991, shall remain valid until their expiration date or until such certificate can be renewed in accordance with the terms of this part and the rules, regulations, and standards of the commission. The commission is authorized to adopt interim rules and regulations to allow for the transition to this part for institutions regulated under the aforementioned articles. (Code 1981, § 20-3-250.23, enacted by Ga. L. 1990, p. 1166, § 3.)

**20-3-250.24. Compensation and benefits of commission employees.**

(a) All employees of the commission shall be subject to and covered by Article 1 of Chapter 20 of Title 45, but the position of executive director and such other employee positions as may be determined by the commission to be exempt from the classified service pursuant to that article shall be exempt unclassified positions, and the commission shall determine and fix the salary and other compensation and benefits to be paid or provided to the employees occupying those positions. All full-time employees of the commission shall be members of the Employees' Retirement System of Georgia, except for members of the Teachers Retirement System of Georgia who, without any break in service, become full-time employees of the commission. Such employees shall continue as members of the Teachers Retirement System of Georgia.

(b) Those positions and employees of the Department of Education which are assigned the sole responsibility for management, professional, and clerical services to nonpublic postsecondary schools and proprietary schools programs are transferred to the commission. All such employees transferred to the commission shall retain all existing rights under the rules of the State Personnel Board, the Employees' Retirement System of Georgia, and the Teachers Retirement System of Georgia. (Code 1981, § 20-3-250.24, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1991, p. 687, § 7; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-25/HB 642.)

**The 2012 amendment**, effective July 1, 2012, substituted "the rules of the State Personnel Board" for "the State Personnel Administration" in the last sentence of subsection (b).

**Editor's notes.** — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of



Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, pro-

vides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

### **20-3-250.25. Transfer of records, files, and accounts from State Board of Education to commission.**

All records, files, accounts, and related items utilized in the administration of the “Georgia Proprietary School Act,” or the “Postsecondary Educational Authorization Act of 1978,” are transferred from the State Board of Education to the commission and executive director. (Code 1981, § 20-3-250.25, enacted by Ga. L. 1990, p. 1166, § 3.)

### **20-3-250.26. No limitation by this part on professional licensing board’s authority.**

Nothing in this part shall be construed to limit a professional licensing board’s authority, as granted by Title 43, to regulate and govern the curriculum, course requirements, instructor qualifications, and other educational activities of nonpublic postsecondary educational institutions. (Code 1981, § 20-3-250.26, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 2000, p. 1706, § 19.)

### **20-3-250.27. Tuition Guaranty Trust Fund.**

(a) It is the purpose of this Code section to create a trust fund from participation fees from postsecondary educational institutions to enable such institutions, collectively, to protect students against financial loss when a postsecondary educational institution closes without reimbursing its students and without completing its educational obligations to its students.

(b)(1) Effective on July 1, 1992, the Tuition Guaranty Trust Fund is created. The participation fees received by the commission from postsecondary educational institutions pursuant to the provisions of subsections (c) and (d) of this Code section shall be deposited in a special account designated “Tuition Guaranty Trust Fund” and shall be held in trust by the board of trustees provided for in paragraph (2) of this subsection for the purpose of carrying out the provisions of this Code section. The money in the fund may be invested by said board of trustees in any bonds and other securities of agencies of the government of the United States and bonds and other securities of state and local governments. The earnings from such investments shall be deposited to the credit of the Tuition Guaranty Trust Fund and shall be available for the same purposes as other money deposited in the fund.

(2) The fund shall be administered by the Board of Trustees of the Tuition Guaranty Trust Fund. The board of trustees shall consist of five members of the commission designated by majority vote of the commission, but one of such members shall be a representative of a nonpublic nondegree-granting postsecondary educational institution, and one of such members shall be a representative of a nonpublic degree-granting postsecondary educational institution. The five members of the commission who are so designated shall serve for such terms of office as members of the board as the commission shall establish by rule or regulation. The commission shall appoint one of the members so designated as chairman of the board. The executive director shall also serve as executive director and secretary of the board. Three members of the board must vote in agreement in order for the board to take official action. The commission may by rule or regulation provide for another member of the commission to serve in the place of a member of the board who is absent from a meeting of the board.

(c)(1) All postsecondary educational institutions operating in this state, except those which are exempt from the provisions of this Code section pursuant to Code Section 20-3-250.3, shall participate in the tuition guaranty fund. Those postsecondary educational institutions specified in paragraphs (10) and (15) of subsection (a) of Code Section 20-3-250.3 and in subsection (c) of Code Section 20-3-250.3 shall participate in the tuition guaranty fund.

(2) Postsecondary educational institutions which were authorized to operate in this state prior to July 1, 1990, and which have maintained continuous authorization in this state since July 1, 1990, and institutions which have been continuously licensed since July 1, 1990, pursuant to the provisions of Title 43 and were authorized by the commission prior to July 1, 1992, shall participate in the fund and shall not be required to provide surety bonds as provided in Code Section 20-3-250.10; provided, however, that any surety bond provided by an institution before July 1, 1992, shall remain in effect for one full year after the effective date of such surety bond.

(3) Postsecondary educational institutions which are currently authorized to operate in this state and which were first authorized to operate in this state on or after July 1, 1990, shall participate in the fund for five years of continuous authorized operation and shall provide the surety bonds required in Code Section 20-3-250.10; provided, however, that such surety bonds shall no longer be required of any such institutions which have maintained five full years of continuous authorized operation to the present. Any institution which fails to maintain continuous authorization in this state, and which subsequently applies for reinstatement of its certificate of



authorization, must provide a surety bond for five full years following reinstatement of authorization.

(d)(1) In addition to any other fees required by this part, the commission shall by regulation establish fees to be paid annually by postsecondary educational institutions for participation in the tuition guaranty fund. The fees shall be based on gross tuition collected during a year by each postsecondary educational institution. If an institution has not operated for a full year, its participation fee shall be based initially on its projected gross tuition for the first full year of operation. At the conclusion of the first year, the fee for that year shall be adjusted to reflect actual gross tuition. The annual fee established by the commission shall be sufficient, when added to the earnings of the fund, to create a balance in the fund of at least \$500,000.00 by July 1, 1997. The board of trustees shall notify the commission when the fund balance exceeds \$500,000.00, and, except as otherwise provided in paragraph (2) of this subsection, upon receiving such notification, the commission shall cease collection of participation fees from postsecondary educational institutions which have contributed to the fund for at least five years. The commission, upon notification from the board of trustees, shall reestablish collection of participation fees from such participating postsecondary educational institutions at any time the fund balance is less than \$475,000.00. At such time, fees shall be collected from such participating institutions according to a schedule adopted by the commission based on gross tuition in amounts sufficient to raise the fund balance to \$500,000.00.

(2) Each postsecondary educational institution which is first authorized to operate in this state after July 1, 1992, and is required to participate in the fund for five years of continuous authorized operation under the provisions of paragraph (3) of subsection (c) of this Code section shall be required to pay participation fees for such period of time notwithstanding the amount in the tuition guaranty fund. If the balance in the fund exceeds \$500,000.00, participation fees shall be collected from each such institution according to the fee schedule adopted by the commission pursuant to paragraph (1) of this subsection.

(3) If earnings from investments, participation fees required under paragraph (2) of this subsection, and claims experience ever cause the balance in the fund to exceed \$5,025,000.00, the commission, upon being notified by the board of trustees, shall make refunds to postsecondary educational institutions which have participated in the fund for at least five years, so that the fund balance is reduced to \$5 million. Any such refund shall be determined by the commission in proportion to the total participation fees paid by a postsecondary educational institution until the time of the refund; provided, how-



ever, no reimbursement shall be made to any postsecondary educational institution whose students have been reimbursed from the fund or from bond forfeiture as provided in subsection (g) of this Code section. The commission shall establish by regulation the time and other procedures and requirements for making any such refund, but refunds shall be issued no more than once during a fiscal year.

(e) The annual cost incurred by the commission and by the board of trustees in administering the Tuition Guaranty Trust Fund, including expenses incurred in collecting from defaulting postsecondary educational institutions the amounts paid from the fund to or on behalf of students pursuant to the provisions of subsection (g) of this Code section, shall be paid from the fund; provided, however, such annual administrative costs shall not exceed 2.5 percent of the participation fees collected from postsecondary educational institutions during the fiscal year. The commission shall issue a report annually to each postsecondary educational institution participating in the fund. The report shall provide an evaluation of the financial condition of the fund and a summary of claims paid or other expenditures from the fund during the immediately preceding fiscal year.

(f) The commission shall establish by regulation a late payment fee for the failure of a postsecondary educational institution to pay its participation fee at the time established by regulation of the commission for the payment of such fees. An application for authorization to operate or for the renewal thereof may be denied under Code Section 20-3-250.12 for failure to pay participation fees. Late payment fees shall be paid into the fund. Any authorization to operate may be revoked, suspended, or made conditional under Code Section 20-3-250.13 for failure to pay participation fees.

(g)(1) Except as otherwise provided in paragraph (2) of this subsection, in the event a postsecondary educational institution participating in the fund goes into bankruptcy or ceases operations without fulfilling its educational obligations to its students or without reimbursing its students, the board of trustees may reimburse from the fund valid claims of students for tuition paid to that institution in accordance with guidelines and procedures adopted by regulations of the board. If a student who attended the defaulting postsecondary educational institution received financial aid under either a state or federal student loan program, the board shall direct payment to the financial institution or other entity who made the loan to the student, rather than directly to the student. If the fund reimburses a student or a financial institution or other entity which made a loan to a student, the fund, to the extent of the amount reimbursed and without the necessity of any further act by any party, shall have an independent claim for recovery against the defaulting postsecondary

educational institution and any surety issuing a bond pursuant to Code Section 20-3-250.10; provided, however, that if the reimbursement from the fund is insufficient fully to cover the amount due the student or the entity making the loan to the student, then such student or entity shall retain the right of recovery against the defaulting institution and the surety for the unreimbursed amount. Payments from the fund shall be made by warrant of the state treasurer on the order of the board of trustees.

(2) Until surety bonds are no longer required of a participating postsecondary educational institution under the provisions of paragraph (3) of subsection (c) of this Code section, the reimbursement of tuition to students or to financial institutions or other entities on behalf of students, in the event of the default of the postsecondary educational institution, shall be accomplished by bond forfeiture proceedings and not from the tuition guaranty fund unless the full amount of the bond is paid in reimbursements and such amount is insufficient to cover all reimbursements; provided, however, that if a student, financial institution, or other lending entity is entitled to reimbursement of tuition paid for a term which concluded before the expiration of the surety bond, the Tuition Guaranty Trust Fund may make reimbursements to the students or to the financial institutions or other entities on behalf of the students prior to initiating bond forfeiture proceedings.

(3) If the board of trustees pays a claim to or on behalf of a student of a defaulting postsecondary educational institution or if such a claim is paid as a result of a bond forfeiture, the authorization to operate of the defaulting postsecondary educational institution shall be automatically revoked as of the date of such payment, if the authorization to operate has not been previously revoked by the commission pursuant to other provisions of this part. If a defaulting postsecondary educational institution reimburses the fund for any claims paid on behalf of its students, the commission shall be authorized to issue a new authorization to operate to such postsecondary educational institution if the commission finds that the institution is then qualified to operate as a postsecondary educational institution. Such an institution shall provide the surety bond required in Code Section 20-3-250.10 for two years and shall pay participation fees to the tuition guaranty fund for five years as provided in paragraph (2) of subsection (d) of this Code section.

(4) If at any time the money available in the tuition guaranty fund is insufficient to satisfy tuition reimbursement claims then pending against the fund, the board of trustees may require each participating postsecondary educational institution to pay a special assessment to the fund. The special assessment shall be in addition to the partici-



pation fee provided for in paragraph (1) of subsection (d) of this Code section but the total amount which may be collected in such special assessments in any one fiscal year shall not exceed either the total amount paid during the immediately preceding fiscal year in participation fees or \$100,000.00, whichever is greater. The maximum amount that may be paid from the fund in claims on behalf of the students of any single defaulting postsecondary educational institution is \$250,000.00, regardless of the fact that total claims may exceed that amount.

(5) As an alternative to paying claims to or on behalf of students of a defaulting postsecondary educational institution, the board of trustees may arrange for another postsecondary educational institution to complete the educational obligations to the students of the defaulting postsecondary educational institution, provided that the program offered by the other institution is substantially equivalent to the program for which the students had paid tuition and provided, further, that attendance at the other institution does not cause unreasonable hardship or inconvenience to the students. The commission shall have the authority to adopt rules or regulations which shall govern the board of trustees in the administration of the provisions of this paragraph. As a part of any such program, the board of trustees may reimburse the other postsecondary educational institution from the fund for expenses incurred by the institution in providing educational services for the students of the defaulting postsecondary educational institution. The Tuition Guaranty Trust Fund shall have an independent claim for recovery against the defaulting postsecondary educational institution and any surety issuing a bond pursuant to Code Section 20-3-250.10 to the extent that the fund has reimbursed a postsecondary educational institution from the fund for expenses pursuant to this paragraph and without the necessity of any further act by any party.

(6) It shall not be necessary to claim a loss or damage pursuant to the provisions of Code Section 20-3-250.14 in order for the board of trustees to pay claims to or on behalf of students pursuant to the provisions of this Code section. Procedures and requirements for filing claims under this Code section shall be as provided by rules or regulations adopted for that purpose by the commission.

(7) Any person aggrieved by a decision of the board of trustees to pay or deny a claim pursuant to the provisions of this Code section may appeal to the commission. A decision of the board of trustees shall be in writing and shall be sent by certified mail or statutory overnight delivery to the claimant and to the owner of the defaulting postsecondary educational institution. If the whereabouts of the owner of the defaulting postsecondary educational institution is not



known and cannot reasonably be ascertained by the board of trustees, a notice of the decision shall be published in the legal organ of the county where the student claimant attended the defaulting postsecondary educational institution or a facility of such institution. The appeal to the commission shall be commenced by filing a written notice of such appeal to the commission within 30 days after receiving the written decision of the board of trustees. Within 30 days after receiving a notice of appeal, the commission shall affirm the decision of the board of trustees, modify and affirm the decision of the board of trustees, or overrule the decision of the board of trustees. Any person aggrieved by the action of the commission shall have the right to judicial review pursuant to the provisions of Code Section 20-3-250.16. The commission shall adopt rules or regulations providing procedures for the conduct of appeals from the board of trustees, but such rules or regulations shall be consistent with the provisions of this paragraph.

(h) The board of trustees shall issue a biennial report to the Governor and members of the General Assembly providing a summary of the financial condition of the fund and claims experience during the preceding biennium. Such reports shall be issued during the regular session of the General Assembly held during each even-numbered year beginning in 1994.

(i) The tuition guaranty fund shall be exempt from all license fees or income, franchise, privilege, occupation, or other taxes levied or assessed by the state or by any county, municipality, or other political subdivision of the state. Any payment of claims or refund of participation fees from the tuition guaranty fund shall not be exempt from taxation unless such payment or refund is exempt from taxation pursuant to the provisions of law independent of the provisions of this part. (Code 1981, § 20-3-250.27, enacted by Ga. L. 1992, p. 2615, § 4; Ga. L. 1993, p. 1402, § 18; Ga. L. 1994, p. 1282, § 11; Ga. L. 1995, p. 10, § 20; Ga. L. 2000, p. 1589, § 3; Ga. L. 2002, p. 1414, § 5; Ga. L. 2010, p. 863, § 3/SB 296.)

**The 2010 amendment**, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” in the last sentence of paragraph (g)(1).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1993, “of subsection (a)” was inserted in the second sentence of paragraph (c)(1).

Pursuant to Code Section 28-9-5, in 2002, in subsection (g); “reimbursements;

provided” was substituted for “reimbursements. Provided” in paragraph (g)(2) and “Tuition Guaranty Trust Fund” was substituted for “Tuition Guaranty Trust fund” in the last sentence of paragraph (g)(5).

**Editor’s notes.** — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the Act was applicable to notices delivered on or after July 1, 2000.

## PART 2

## GEORGIA HIGHER EDUCATION ASSISTANCE CORPORATION

**Cross references.** — Investment by and interest by Georgia Higher Education insurers in loans guaranteed as to principal Assistance Corporation, § 33-11-19.

**20-3-260. Short title; name of program.**

This part shall be known and may be cited as the “Georgia Higher Education Assistance Corporation Act.” The educational loan program provided for in this part may be referred to and cited as the “Georgia Higher Education Loan Program.” (Code 1933, § 32-3301, enacted by Ga. L. 1980, p. 835, § 2; Ga. L. 1981, p. 735, § 1.)

## JUDICIAL DECISIONS

**Language of promissory note controls conflicting oral representations by lender.** — Defaulting borrower’s assertion that the borrower was relieved of the borrower’s obligation to repay a loan by virtue of certain oral representations made by an agent of a lender was in direct conflict with the language of the note itself, which clearly and unconditionally required the indebtedness to be repaid in cash in monthly installments. *Georgia Higher Educ. Assistance Corp. v. Geldon*, 187 Ga. App. 798, 371 S.E.2d 449 (1988).

## OPINIONS OF THE ATTORNEY GENERAL

**Georgia Higher Education Assistance Corporation may invest default reserve funds** with federal savings and loan associations and with state-chartered building and loan associations which are insured by the Federal Savings and Loan Insurance Corporation. 1969 Op. Att’y Gen. No. 69-215.

**20-3-261. Legislative findings; purpose of corporation.****(a) Legislative findings.**

(1) The General Assembly finds that the growth and development of this state and nation have been and will undoubtedly remain strongly related to the degree to which educational opportunities are provided to all of their citizens; recognizes that costs associated with postsecondary educational opportunities are substantial when considered in relation to the average earnings and wealth of most families and that such costs are in many cases prohibitive; and acknowledges that a need exists for a means whereby students and parents of students can obtain low-interest loans in a manner that will enable them to spread and thereby ease the immediate costs of such higher education and that an adequate guaranty, among other things, of such loans is essential to assure the accessibility of private loan funds to many students and parents of students. Accordingly, the General Assembly determined, as early as 1964, that such a means

for the generation of private loan funds to citizens for postsecondary educational purposes could exist through the exercise of the powers, duties, and functions vested by the General Assembly in the Georgia Higher Education Assistance Corporation. The General Assembly now reaffirms that earlier determination.

(2) The General Assembly further finds that substantial investments of public and private moneys have been made and will undoubtedly continue to be made in the construction, development, and operation of public and private postsecondary educational institutions; that such postsecondary educational institutions are of immense value to the state and nation in that they promote the general welfare and the economic and cultural development and prosperity of the state and nation and all their citizens; that it is in the public interest to sustain such institutions; and, therefore, that the provision of educational loan assistance to persons, and for and on behalf of persons, who desire to attend such educational institutions will be of substantial financial benefit to those institutions and will better ensure their continued economic viability and value to the state and nation.

(3) The General Assembly further finds that since 1965 the United States has made similar findings and determinations; that through the enactment of various federal acts, the United States secretary of education is authorized and directed to administer various programs providing for loans and grants to students and parents and to enter into agreements in support of local guaranty agencies, such as the corporation, that are administering at the local level an educational loan program and to provide partial federal financial support to such agencies and programs; and, further, that pursuant to such federal acts and such agreements, the secretary will reinsure certain educational loans that are guaranteed by the corporation; and that the secretary will pay certain federal interest subsidies and special allowances to the holders of such loans for and on behalf of the borrowers and certain other payments to the corporation in respect of such loan.

(4) The General Assembly therefore determines that it is a valid public purpose to promote the educational level of achievement and the welfare and general prosperity of the state and nation, and the continued economic viability and value of postsecondary educational institutions by providing a means for the extension of educational loan credit to students and parents of students, for the servicing of such loans, and for the guaranty of such credit, among other things, and therefore finds and declares that continuation of the corporation and the carrying out of its corporate powers, duties, and functions as provided for in this part is in all respects a necessary and valid public purpose within the meaning of the Constitution of Georgia.



(b) **Purpose of corporation.** The purpose of the corporation shall be to improve the higher educational opportunities of eligible students, so as to assure availability of the benefits of the federal acts and this part to eligible students and parents, schools, and lenders. (Code 1933, § 32-3302, enacted by Ga. L. 1980, p. 835, § 2; Ga. L. 1981, p. 735, §§ 2, 3; Ga. L. 1982, p. 3, § 20; Ga. L. 1995, p. 961, § 2.)

#### OPINIONS OF THE ATTORNEY GENERAL

**Program of guaranteed educational loans authorized.** — Georgia Higher Education Assistance Corporation is authorized to establish and administer a program of guaranteed educational loans to eligible parents; but the guarantee of and payment of interest on loans to parents who are not Georgia citizens must be by private, not state appropriated funds. 1980 Op. Att’y Gen. No. 80-153.

**Georgia Higher Education Assistance Corporation may invest default reserve funds** with federal savings and loan associations and with state-chartered building and loan associations which are insured by the Federal Savings and Loan Insurance Corporation. 1969 Op. Att’y Gen. No. 69-215.

#### 20-3-262. Definitions.

As used in this part, the term:

(1) “Authority” means the Georgia Student Finance Authority created by Code Section 20-3-313.

(2) “Authorized officer” means the chairman, vice-chairman, executive director or president, treasurer, secretary, or other person authorized by this part, resolution of the board of directors, or the bylaws of the corporation to act as an authorized officer of the corporation for any prescribed purpose.

(3) “Board of directors” means the board of directors of the corporation.

(4) “Borrower” means an eligible student or eligible parent who has obtained an educational loan under this part.

(5) “Commission” means the Georgia Student Finance Commission created by Code Section 20-3-233.

(6) “Corporation” means the Georgia Higher Education Assistance Corporation created by Code Section 20-3-263.

(7) “Directory information” means the present or last known name, address, and place of employment; social security number; telephone number; school enrollment status; academic classification and standing; actual or anticipated date of graduation, withdrawal from, or transfer to another school; and other educational loan indebtedness, as the case may be and as may be applicable to a borrower, comaker,

cosigner, endorser, or personal or credit reference named on an application for loan guaranty under this part, and the spouse thereof.

(8) “Federal act” or “federal acts” means all provisions of federal statutes which provide federal funds for any financial aid purpose or for any activity related to student financial aid and federal statutes relative to programs of low-interest educational loans to students and parents administered in whole or in part by the secretary, including but not limited to the federal Higher Education Act of 1965 (P.L. 89-329), as amended, and all rules and regulations prescribed by the secretary pursuant thereto.

(9) “Federal interest subsidies” means the interest subsidy payments provided for in the federal act.

(10) “Guaranty agency” means the corporation.

(11) “Guaranty fee” means the insurance premium charge authorized by Code Section 20-3-271.

(12) “Lender” means any entity located within or outside the state which is approved by the corporation pursuant to this part for purposes of the program, including the secretary, and including the Student Loan Marketing Association created by the federal act and the authority created by Code Section 20-3-313; provided, however, that each such entity shall have the right to be a lender only to the extent and upon such terms and for such purposes as may be prescribed by the corporation.

(13) “Loan” or “educational loan” means an obligation representing advances of money by a lender to an eligible student or eligible parent evidenced by one or more promissory notes, on note forms prescribed by the corporation. In the event of the purchase and sale or the pledge or assignment of such loans or a participating interest in such loans, the term shall include contingent interests, security interests, pledges, commitments, choses in action, or other property interests in such loans.

(14) “Loan guaranty” means the document or endorsement issued by the corporation as evidence of the guaranty by the corporation of an educational loan to be made by a lender to an eligible student or eligible parent. The term “guaranty,” when used in this part, shall have the same meaning as “insurance,” as such term is used in the federal act, and be synonymous therewith.

(15) “Parent” or “eligible parent” means a parent of an eligible student who qualifies for an educational loan under the federal act and regulations prescribed by the corporation.

(16) “Part” means this part, including rules and regulations prescribed by the board of directors pursuant thereto.

(17) "Program" means the Georgia Higher Education Loan Program as provided for in the federal act and this part.

(18) "School" means any educational institution located within or outside the state which:

(A) Is approved by the corporation pursuant to this part for purposes of the program; and

(B) Has in force and effect with the corporation, if required by the corporation, a school agreement as prescribed by the corporation.

(19) "Secretary" means the United States secretary of education or any other official succeeding to the powers of such secretary under the federal act.

(20) "Special allowance payments" means the special allowance payments provided for in the federal act.

(21) "Student" or "eligible student" means a student who qualifies for an educational loan under this part. (Code 1933, § 32-3303, enacted by Ga. L. 1980, p. 835, § 2; Ga. L. 1981, p. 735, §§ 4-10; Ga. L. 1995, p. 961, § 3.)

**U.S. Code.** — The federal Higher Education Act of 1965, referred to in paragraph (8) of this Code section, is codified at 20 U.S.C. § 1001 et seq.

### **20-3-263. Corporation created as successor to former Georgia Higher Education Assistance Corporation.**

(a) There is created a public authority, a body corporate and politic, to be known as the Georgia Higher Education Assistance Corporation, which shall be deemed to be an instrumentality and a nonprofit public corporation of the state.

(b) The corporation created by subsection (a) of this Code section shall be the successor to and a continuation of, without interruption, the previously existing Georgia Higher Education Assistance Corporation created by an Act approved March 12, 1965 (Ga. L. 1965, p. 217), as amended. The continuation of the Georgia Higher Education Assistance Corporation, as provided in this Code section, shall in no way affect any existing obligations, liabilities, or rights of the previously existing Georgia Higher Education Assistance Corporation. All such obligations, liabilities, and rights, including, without limitation, obligations, liabilities, and rights in respect of loan guaranties issued to lenders by the previously existing corporation and in respect of payment of state interest subsidies and placement, conversion, and loan discount fees on loans guaranteed by the previously existing corporation, pursuant to provisions of state and federal laws in effect at the time such obliga-



tions, liabilities, and rights were incurred or created are transferred to, vested in, and assumed by the corporation created by subsection (a) of this Code section. All contracts and agreements between any party and the previously existing Georgia Higher Education Assistance Corporation shall not be affected by this Code section but shall continue in full force and effect, without interruption, as contracts or agreements between such party and the corporation created by subsection (a) of this Code section.

(c) Right, title, interests in, and ownership of all assets of the previously existing Georgia Higher Education Assistance Corporation are transferred to and vested in the corporation created by subsection (a) of this Code section.

(d) The corporation created by subsection (a) of this Code section is designated as the state guaranty agency to administer the program in this state as provided for in the federal act and this part. (Ga. L. 1964, p. 735, § 1; Ga. L. 1965, p. 217, § 1; Ga. L. 1966, p. 726, § 1; Code 1933, § 32-3304, enacted by Ga. L. 1980, p. 835, § 2.)

**Editor's notes.** — The Act creating the former Georgia Higher Education Assistance Corporation (Ga. L. 1965, p. 217), referred to in subsection (b) of this Code section, was repealed by Ga. L. 1980, p. 835, § 5.

#### RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 141.

#### **20-3-264. Functions and composition of board of directors; organization and conduct of affairs.**

(a) **Functions and composition.** The corporation shall be governed and all of its corporate powers, duties, and functions shall be exercised by a board of directors. The board of directors shall be composed of 13 members, who shall be the same persons who are serving and who shall serve as members of the board of commissioners of the commission pursuant to Code Section 20-3-234. The executive director of the corporation, or president, if designated by such title by the board of directors, shall be an ex officio member of the board of directors. The board of directors provided for by this subsection shall be the successor to and a continuation of, without interruption, the board of directors of the previously existing Georgia Higher Education Assistance Corporation. No director shall be eligible to become an officer or employee of the corporation for a period of one year after expiration of the director's period of service as a director of the corporation.

(b) **Organization and conduct of affairs.** Subsections (c) through (h) of Code Section 20-3-234, pertaining to the commission and relative to officers of the board of commissioners, meetings of the board of

commissioners executive committee, other committees, compensation of commissioners, and advisory councils, inclusively, are incorporated by reference into this subsection and shall apply to the board of directors in the same manner as if fully set out, with conformable language, in this subsection. The board of directors shall organize and conduct its affairs in accordance with such provisions of law; provided, however:

(1) That nothing in this subsection shall be construed to mean that the board of directors must elect the same persons to serve as officers of the board of directors as are elected by the board of commissioners of the commission to serve as officers of the board of commissioners;

(2) That no person serving as a public commissioner of the commission and thereby as a director of the corporation shall receive more than one day's per diem, plus actual expenses incurred, for one day's service or portion thereof rendered to the state; and

(3) That the limitation as to the number of days during any fiscal year that a per diem may be paid to a public commissioner of the commission shall be inclusive of services rendered by such person as a director of the corporation. (Code 1933, § 32-3305, enacted by Ga. L. 1980, p. 835, § 2; Ga. L. 2003, p. 158, § 2.)

#### **20-3-265. Corporation officers and employees; bonds.**

The executive director of the commission, or president, if designated by such title by the board of commissioners, shall serve as the executive director, or president, if designated by such title by the board of directors, and chief executive officer of the corporation. The executive director shall provide for maintenance of accurate and permanent minutes and records of all proceedings and activities of the board of directors and the corporation and have authority and responsibility to implement and carry out all administrative powers, duties, and functions of the corporation in accordance with governing state and federal laws and rules, regulations, and policies prescribed by the board of directors. The treasurer of the commission shall serve as treasurer of the corporation. The treasurer shall receive and disburse all funds made available to or for the use of the corporation by the General Assembly or otherwise in accordance with law and as may be directed by the board of directors. The secretary of the commission shall serve as secretary of the corporation. Other officers of the commission who are assigned duties and responsibilities relative to the purposes of the corporation may be designated as officers of the corporation. The foregoing officers and all other employees, professional personnel, agents, experts, consultants, and persons employed or retained by the commission who are assigned duties and responsibilities relative to the purposes of the corporation shall perform such assigned duties and

responsibilities in accordance with the federal act and this part. Fidelity bond coverage of officers, employees, and members of the commission provided pursuant to paragraph (4) of Code Section 20-3-235 and covering such persons who are performing duties and responsibilities relative to the corporation pursuant to this part shall also be conditioned as to the insured and in such respects and for such sums as the board of directors determines necessary to protect the interests of the corporation. (Code 1933, § 32-3306, enacted by Ga. L. 1980, p. 835, § 2; Ga. L. 2003, p. 158, § 3.)

**20-3-266. Powers and duties of the corporation; conflicts with federal or state law.**

In addition to all other provisions of this part and in furtherance of the purposes of the corporation, the corporation shall have the following powers, duties, and functions:

(1) The corporation shall establish and administer a program of guaranteed educational loans to eligible students and eligible parents, to be known as the Georgia Higher Education Loan Program, in accordance with this part and the federal act; and pursuant thereto, the corporation is further authorized:

(A) To adopt rules, regulations, and policies necessary, appropriate, or convenient for the administration of its affairs; the execution of its powers, duties, and functions; and the accomplishment of its corporate purposes, as prescribed in this part and the federal act;

(B) To receive all moneys made available by the General Assembly or otherwise for the purposes of the corporation and to use such moneys in accordance with this part and the federal act;

(C) To enter into agreements and undertakings with the secretary, including guaranty agreements and supplemental guaranty agreements as described in the federal act, as may be required and necessary pursuant to the federal act in order to administer the program in this state, to provide for reimbursement by the secretary of amounts expended by the corporation in discharge of its guaranty obligations, to provide for the payment of federal interest subsidies and special allowance payments in respect of educational loans guaranteed by the corporation, and to provide for its receipt, or receipt by the holders of educational loans guaranteed by the corporation, of administrative allowances and other benefits available under the federal act; and the corporation is expressly authorized to constitute, conduct, regulate, and administer the program so that such program conforms to the specifications for state educational loan guarantee programs set forth in the federal act



and in rules and regulations promulgated pursuant to the federal act and so that the provisions for agreements between the secretary and state guaranty agencies set forth in the federal act and in rules and regulations promulgated pursuant to the federal act may be agreed to and complied with by the corporation;

(D) To adopt rules and regulations pertaining to guaranteed educational loans and loan guaranties;

(E) To provide and issue loan guaranties evidencing the guaranty, upon such terms and conditions as the corporation may prescribe within limitations provided by this part and the federal act, of educational loans to be made by lenders, except that no loan guaranty shall be issued unless the educational loan to be made shall be the subject of agreements under the federal act providing for reimbursement by the secretary of amounts expended by the corporation to discharge any guaranty obligation in respect of the loan guaranty to the maximum extent available at the time under the federal act;

(F) To administer federal funds allotted to the corporation or to the state in respect of educational loans guaranteed under the federal act, related matters, and related administrative costs;

(G) To enter into contracts and agreements with lenders upon such terms and conditions as may be prescribed by the corporation or otherwise agreed upon between the corporation and the lender, consistent with this part, the federal act, and agreements entered into between the corporation and the secretary;

(H) To provide for lenders obtaining a comaker, cosigner, or endorser on loans, subject to limitations prescribed in the federal act;

(I) To provide for additional security on loans, subject to limitations prescribed in the federal act;

(J) To provide for the consolidation of promissory notes evidencing loans guaranteed under this part without affecting the guaranty of the corporation thereon;

(K) To enter into contracts and agreements with schools upon such terms and conditions as may be prescribed by the corporation or otherwise agreed upon between the corporation and the school, consistent with this part, the federal act, and agreements entered into between the corporation and the secretary;

(L) To require that schools located in the state shall designate one or more persons who shall be responsible for receiving and controlling and disbursing or delivering, as the case may be,

student aid checks or funds that are required to be or which may optionally be disbursed to, delivered to, or otherwise provided to the school under this part for further disbursement or delivery to students enrolled therein, and to provide for matters relative thereto;

(M) To require, in its discretion, that schools located in this state or, with approval of the corporation, a combination thereof jointly shall provide fidelity bond coverage of school employees who have access to checks or funds that may be routed through the school under this part to students enrolled therein in such sums and conditioned in such respects as to the insured as may be reasonably necessary to protect the interests of the corporation and the lenders and to provide for matters relative thereto;

(N) To limit the applicability of designated rules and regulations to schools located within this state, or within this state and states bordering on this state, in that the majority of students for whom loans are guaranteed under this part are attending schools located within such states;

(O) To provide for the application of school refunds to educational loan indebtedness incurred under this part, consistent with the requirements of any other federal or state law, rule, or regulation which provides financial aid to students and for the application of school refunds relative to those programs;

(P) To approve, disapprove, limit, suspend, or terminate the participation of a school or a lender in the program administered by the corporation, consistent with this part, the federal act, and agreements entered into between the corporation and the secretary, and to provide for such formal and informal procedures in regard thereto as may be appropriate;

(Q) To collect from borrowers, comakers, cosigners, or endorsers all amounts owed in respect of educational loans on which the corporation has been required to meet its loan guaranty obligation following the inability of the holders of such loans to collect such amounts and to provide for all matters relative thereto;

(R) To provide for the classification of loans purchased from lenders in accordance with the status of borrowers and the current apparent collectability status of such loans from borrowers; and, consistent with the federal act and with the approval of the secretary whenever such approval is required, to consent to the modification of the terms of a note; and to compromise, satisfy, and settle loan amounts due, as to which federal reinsurance payment has been received by the corporation, for less than the amount due thereon; and to waive or release any right, title, claim, equity, lien,

or demand relative to a borrower or to any asset, however acquired, whenever deemed to be necessary or best protective of the financial interests of the corporation and the United States; provided, however, that no claim or right of the corporation to payment of any amount due which is the result of an expenditure made by the corporation from funds appropriated by the General Assembly for use by the corporation may be compromised, satisfied, settled, waived, or released for less than the principal amount due without the approval of the Attorney General;

(S) To require that reports, in such form and containing such information as the corporation may prescribe, be furnished to the corporation by schools and lenders as it may deem necessary for the effective performance of its powers, duties, and functions under this part and the federal act;

(T) To prescribe minimum information that must be included in any oral or printed information, announcement, communication, or material that is:

(i) Published or otherwise disseminated by, for, or on behalf of a lender relative to educational loans provided for in this part; or

(ii) Published or otherwise disseminated by any person, corporation, association, partnership, or other organization engaged in this state in the business of providing to students or parents of students, in consideration of the receipt therefor of a fee, commission, charge, or other valuable consideration from any source, contingent or otherwise, information about, or assistance in, applying for or obtaining educational loan assistance under this part;

(U) To require that such administrative and fiscal procedures be used by the corporation, lenders, and schools as may be necessary to protect the corporation and the United States from the risk of unreasonable loss and to ensure proper and effective administration of the program;

(V) To keep and maintain, and to require that lenders and schools keep and maintain, such records as may be required by this part, the federal act, or determined by the corporation to be necessary for the proper and efficient administration of the program and to require that such records be made available to employees of the corporation and the United States for examination and inspection, as may be necessary or appropriate;

(W) To secure data, except where specifically prohibited by state or federal law, from any state agency, department, instrumentality, political subdivision of the state, or any other source, for the



purpose of verifying information submitted by a student or a parent when applying for or receiving educational loan assistance under this part and to pay costs incurred by the provider of such data;

(X) Except where specifically prohibited by state or federal law, to obtain from each state agency, department, instrumentality, and political subdivision information contained in its records relative to the present or last known address and telephone number of a borrower, comaker, cosigner, or endorser, identified to the provider by name and social security number, and to pay costs incurred by the provider of such information; and each state agency, department, instrumentality, and political subdivision is authorized and directed to provide the information specified in this subparagraph to the corporation upon its request;

(Y) To restrict or broaden definitions and provisions contained in this part and the federal act, consistent, however, with limitations imposed by the federal act. By reason of legislative intent expressed in Code Section 7-1-626, the corporation is authorized, notwithstanding other provisions of this part, to broaden the terms "student" and "eligible student," as defined in paragraph (21) of Code Section 20-3-262, to include a student who is not a resident of this state, provided the participating lender is actively making loans under this part to residents of this state, but no state appropriated funds shall be expended relative to loans made to such a student or to the parent of such a student for the purposes prescribed in subparagraph (E) of this paragraph and in Code Sections 20-3-273 and 20-3-274;

(Z) To provide for and administer an educational loan escrow disbursement system for the benefit and protection of lenders, students, the corporation, and the United States and to provide for all matters relative thereto, consistent with the federal act;

(AA) To gather information on all educational loan funds available from any source to residents of the state and to disseminate such information through such methods of mass or individual communication as may be necessary better to assure that students and parents are aware of the availability of such loan resources;

(AA.1) To advertise or otherwise promote the programs, functions, and purposes of the corporation and to expend funds available to the corporation for such purposes;

(BB) To receive funds from any source, public or private, by gift, grant, bequest, loan, or otherwise, either absolutely or in trust, and to hold, use, administer, and expend such funds on its behalf and for any of its corporate purposes; and to acquire from any source, public or private, by purchase, lease, gift, bequest, or devise, any

property, real, personal, or mixed, either absolutely or in trust, and to hold, use, administer, and dispose of such property on its behalf and for any of its corporate purposes;

(CC) To provide procedures for the filing, hearing, and determination of an appeal made by an aggrieved party of a decision made by the corporation in the administration of the program, and for all matters relative thereto;

(DD) To enter into agreements and undertakings as may be necessary or appropriate in the exercise of its powers, duties, and functions under this part and the federal act;

(EE) To perform such other acts as may be necessary or appropriate to carry out effectively the purposes of the corporation under this part and the federal act;

(FF) To adopt an official seal and alter the seal at its pleasure;

(GG) To maintain a principal office and such other offices as may be appropriate;

(HH) To adopt bylaws and policies for the regulation of its affairs and the conduct of its business;

(II) To bring and defend actions in the name of the corporation and to plead and be impleaded; and

(JJ) To do any and all things necessary, desirable, convenient, or incidental for the accomplishment of the objectives of this chapter and to exercise any power usually possessed by private corporations performing similar functions which is not in conflict with the public purposes of the corporation or the Constitution and laws of this state, including, but not limited to:

(i) The power to retain accounting and other financial services;

(ii) The power to purchase all kinds of insurance, including, without limitation, insurance against tort liability and against risks of damage to property;

(iii) The power to indemnify and hold harmless any parties contracting with the corporation or its agents from damage to persons or property; and

(iv) The power to act as a self-insurer with respect to any loss or liability and to create insurance reserves;

(2) The corporation shall have the power to service or contract for the servicing of educational loans, including the servicing of such loans by the corporation on behalf of others, to contract in advance for

the servicing of educational loans, and to contract for the performance by the corporation of any portion of the program;

(3) All provisions of this part to the contrary notwithstanding, the corporation is authorized to guarantee service cancelable loans made to students by the authority pursuant to paragraph (1) of subsection (b) of Code Section 20-3-374 even if such loans do not meet all requirements of the federal act. In this event, conditions prescribed by the corporation for the guarantee of such loans shall, to the maximum extent deemed practicable, be the same as otherwise prescribed in this part relative to loans guaranteed by the corporation pursuant to the federal act;

(4) Each applicant who, as of the date of application for financial assistance under this part, is required but has not registered with the Selective Service System of the United States pursuant to 50 U.S.C. Section 453, as amended, shall be ineligible to receive financial assistance under this part. Each applicant shall, under penalty of perjury, certify compliance or noncompliance with the registration requirements of the Military Selective Service Act of the United States and provide such other information as the corporation may reasonably require;

(5) If any conflict exists between this part and the federal act or any rules or regulations promulgated under the federal act, which conflict will result in a loss by the corporation of any federal funds or other funds that would otherwise be available to it for carrying out its purposes under this part, including, but not by way of limitation, federal and other funds available to the corporation under the federal act as administrative cost allowances; as retainage of a portion of moneys collected from borrowers, comakers, cosigners, endorsers, or others on guaranteed loans purchased from lenders or holders by the corporation; and as reimbursement for amounts paid by the corporation in the discharge of its guaranty obligations, the corporation is authorized, empowered, and directed to adopt appropriate rules, regulations, and policies, consistent with the federal act, to remove such conflict and thereby to provide for the receipt or retainage of such funds; provided, however, that such rules, regulations, or policies are not in derogation of the Constitution or laws of the state, other than this part, or any contract to which the corporation is a party and are wholly in conformity with the purposes of the corporation as set forth in this part; and

(6) To the extent that this part is inconsistent with any other general or special law of the state or with any rule or regulation, this part shall be controlling. (Code 1933, § 32-3307, enacted by Ga. L. 1980, p. 835, § 2; Ga. L. 1981, p. 735, §§ 11-20; Ga. L. 1982, p. 3, § 20; Ga. L. 1986, p. 759, § 1; Ga. L. 1987, p. 378, § 1; Ga. L. 1987,



p. 1119, § 1; Ga. L. 1992, p. 1001, §§ 2, 3; Ga. L. 1995, p. 961, § 4; Ga. L. 1997, p. 143, § 20; Ga. L. 2005, p. 1134, § 1/HB 298.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1996, “collectability” was substituted for “collectibility” in subparagraph (1)(R).

### OPINIONS OF THE ATTORNEY GENERAL

**Editor’s notes.** — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 32-3305 (Ga. L. 1965, p. 217), and former Code 1933, § 32-3306, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Section must be presumed to be constitutional.** 1969 Op. Att’y Gen. No. 69-205 (decided under former Code 1933, § 32-3306, which specified who could make loans).

**Program of guaranteed educational loans authorized.** — Georgia Higher Education Assistance Corporation is authorized to establish and administer

a program of guaranteed educational loans to eligible parents; but the guarantee of and payment of interest on loans to parents who are not Georgia citizens must be by private, not state appropriated funds. 1980 Op. Att’y Gen. No. 80-153.

**Georgia Higher Education Assistance Corporation may invest default reserve funds** with federal savings and loan associations and with state-chartered building and loan associations which are insured by the Federal Savings and Loan Insurance Corporation. 1969 Op. Att’y Gen. No. 69-215 (decided under former Code 1933, § 32-3305 (Ga. L. 1965, p. 217)).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Funds, § 4. 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 73, 74, 90, 99.

**C.J.S.** — 81A C.J.S., States, §§ 28, 142, 145, 151, 155, 209, 210, 225, 297, 298.

### 20-3-267. Accounting system; use of funds; payments to commission.

The corporation shall maintain a system of accounts in accordance with generally accepted accounting procedures and standard accounting procedures and systems established by the state, where applicable, which shall, among other things, properly identify and account for all funds received by the corporation, the source of such funds, and all expenditures of the corporation. Agency, federal, and other funds of the corporation, determined to be available for such purposes, may be used to discharge any guaranty obligation of the corporation, to pay any state interest subsidy and lender discount payment obligations of the corporation, and to pay expenses and operating costs incurred by the corporation, including payments to the commission to defray expenses and operating costs of the corporation paid or to be paid by the commission for or on behalf of the corporation. No funds of the corporation shall lapse to the state as of the close of any fiscal year. (Code 1933, § 32-3308, enacted by Ga. L. 1980, p. 835, § 2.)

**20-3-268. Annual audits of corporation; distribution of audit reports.**

The state auditor shall make an annual financial audit of the books, accounts, and records of the corporation. The state auditor shall maintain a copy of the audit report on file in his or her office, make copies of the report available for inspection by the general public, and furnish a copy of the report to the corporation, to members of the board of directors of the corporation, and to the Governor and shall notify the members of the General Assembly of the availability of the report in the manner which he or she deems to be most effective and efficient. (Ga. L. 1964, p. 735, § 12; Ga. L. 1965, p. 217, § 13; Code 1933, § 32-3341, enacted by Ga. L. 1980, p. 835, § 2; Ga. L. 2005, p. 1036, § 16/SB 49.)

**20-3-269. Loan guaranties not state debt; directors and officers not personally liable for issuance of guaranties.**

Loan guaranties issued under this part shall not be deemed to constitute a debt, liability, or obligation of, or a pledge of the faith and credit of, the state but shall be payable solely from revenues or assets of the corporation provided for such payment pursuant to paragraph (1) of Code Section 20-3-275. No director or officer of the corporation shall be subject to any personal liability or accountability by reason of the issuance of loan guaranties by the corporation. (Code 1933, § 32-3309, enacted by Ga. L. 1980, p. 835, § 2.)

**OPINIONS OF THE ATTORNEY GENERAL**

**Editor's notes.** — In light of the similarity of the statutory provisions, opinions under former Ga. L. 1965, p. 217, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Notes guaranteed by corporation and United States government** are "obligations". 1971 Op. Att'y Gen. No. 71-69 (decided under former Ga. L. 1965, p. 217).

**State depositories may pledge or assign guaranteed notes.** — State depositories may pledge or assign to the State Treasurer (now director of the Office of Treasury and Fiscal Services), in lieu of surety bonds, notes fully guaranteed by the corporation to the extent that the notes are reinsured by the United States government in accordance with former Code 1933, § 100-108. 1971 Op. Att'y Gen. No. 71-69 (decided under former Ga. L. 1965, p. 217).

**20-3-270. Loan guaranties conditioned on lenders' and holders' due diligence.**

The guaranty of the corporation on an educational loan made under this part is conditioned upon exercise of due diligence by the lender and by any subsequent holder of the loan, as may be applicable, in the making of the loan, in the servicing of the loan account, and in the

collection of the loan in accordance with the federal act and this part. (Code 1933, § 32-3310, enacted by Ga. L. 1980, p. 835, § 2.)

**20-3-271. Insurance premiums or guaranty fees.**

The corporation is authorized to charge and collect insurance premiums on loans in accordance with the federal act and to provide for all matters relative thereto. In the administration of the program, the insurance premium charged may be identified and referred to as a "guaranty fee." Guaranty fees collected by the corporation shall be credited to the corporation's loan guaranty fund. (Code 1933, § 32-3311, enacted by Ga. L. 1980, p. 835, § 2.)

**20-3-272. Submission of lenders' billings and reports to secretary by corporation; use of state funds to accelerate federal payments.**

(a) **Corporation billing and report services.** Pursuant to the federal act, each lender must submit to the secretary such reports as he may require and must prepare and submit billings for the payment of federal interest subsidies and special allowances due the lender on loans held by the lender when the federal act provides for their payment by the United States on behalf of borrowers during the in-school, grace, and deferment periods of time. The corporation is not required but is authorized, pursuant to its regulations and the terms of an agreement between it and a lender but subject to any limitations imposed by the federal act, to prepare, without charge to the lender, the lender's periodic billings for federal interest subsidies and special allowances due on loans held by the lender and to submit them on behalf of the lender to the secretary for payment by the United States directly to the lender or to the corporation for and on behalf of the lender; and it is further authorized, but not required, to prepare and submit on behalf of lenders any statistical type of report required of lenders by the secretary. Interest billings and reports prepared and submitted on behalf of a lender pursuant to this Code section shall be prepared on the basis of individual borrower account records of the lender, as reflected on the records of the corporation as a result of loan transaction data reported to the corporation by the lender, but without warranty by or liability therefor of the corporation. A copy of each interest billing submitted to the secretary on behalf of a lender, including a copy of the corporation's computation of interest and allowances due the lender and the lender's loan transaction and account data on which the computation is made, shall be furnished to the lender upon payment thereof; and the lender shall be responsible therefor. It shall be the duty of each such lender to audit the copies for completeness and accuracy, post payments received to its records, and to report any correction of



loan transaction data to the corporation so that the corporation's records can be corrected and so that any interest adjustment that needs to be made can be made on the next subsequent interest billing prepared for the lender. Any overpayment of federal interest subsidies or special allowances to a lender on behalf of a borrower by the United States or of state interest subsidies or loan discount payments by the state, and repayment thereof, shall be the responsibility of the borrower or the lender. Services provided for a lender by the corporation under this Code section are declared to be purely clerical and ministerial only and provided to the lender without charge as a convenience to the lender.

(b) **Use of state funds to accelerate federal payments.** In the event the United States makes the federal payments referred to in subsection (a) of this Code section to lenders through the corporation, the corporation is authorized, in order to accelerate and pay them to lenders as early as possible after the end of each calendar quarter, to use temporarily for this purpose any available state funds that have been appropriated for use by the corporation during the current fiscal year and state funds that have been appropriated for use by the authority during the current fiscal year which the authority may temporarily transfer to the corporation for use by the corporation for this purpose, pending receipt by the corporation of the payment from the United States and the transfer of such authority funds back to the authority by the corporation. (Code 1933, § 32-3313, enacted by Ga. L. 1980, p. 835, § 2; Ga. L. 1981, p. 735, § 21.)

### **20-3-273. State interest subsidy payments for student borrowers.**

The corporation is authorized to pay to the lender, on behalf of a student borrower and out of the corporation's state interest subsidy and loan discount fund, interest accruing on a loan guaranteed by the corporation which is not eligible for payment of the federal interest subsidy provided for in the federal act; provided, however, that no loan shall be guaranteed and no such interest shall be paid by the corporation, unless the loan is eligible for federal reinsurance and federal special allowance payments pursuant to the federal act and unless the state has appropriated funds for use by the corporation for the purposes of this Code section, and that such appropriated funds plus funds then in and projected to become available to the corporation's state interest subsidy and loan discount fund are deemed to be sufficient to enable the corporation to meet its state interest subsidy and loan discount payment obligations to become due and payable during the period of any fiscal year for which the General Assembly has already enacted an appropriations Act. Interest accruing and payable on a nonfederally

subsidized loan guaranteed pursuant to this Code section shall thereafter be payable by the corporation at the same times, in the same manner, and during the same periods of time as the federal interest subsidy is otherwise payable on federally subsidized loans pursuant to the federal act. Interest paid on behalf of a student borrower under this Code section is declared to be a loan to the student by the state under this part and guaranteed by the corporation as to repayment by the student in the same manner as if such nonfederally subsidized interest had been deferred and capitalized by the lender holding the underlying loan. The loan of interest made on behalf of a student borrower under this Code section must be repaid by the student borrower by virtue of this Code section and pursuant to provisions set forth in the promissory note executed by the student evidencing the underlying loan. Such interest loan may be repaid by the student, without interest accruing thereon, at any time before maturity of the underlying loan, but shall in any event be repayable in full, without interest thereon, upon maturity of the underlying loan or thereafter, without interest thereon, in monthly installments agreed to by the corporation. Interest loans repaid to the corporation pursuant to this Code section and the underlying promissory note shall be credited to the corporation's state interest subsidy and loan discount fund for further use by the state for purposes of that fund as provided for in subsequent appropriations Acts of the General Assembly. Failure by a student to repay an interest loan owed to the state under this Code section when due shall constitute a default thereon, subject to any forbearance granted to the student by the corporation on behalf of the state, and may thereafter be paid as a default at any time by the corporation; but any default by a student in the payment of an interest loan shall not constitute a default by the student to the lender on the underlying loan. The right of the corporation to collect an interest loan due and owing by a student to the state under this Code section is not subrogated to the right of the lender to collect the underlying loan nor to the right of the corporation to collect any amount becoming due to the corporation on the underlying loan. (Code 1933, § 32-3314, enacted by Ga. L. 1980, p. 835, § 2; Ga. L. 1981, p. 735, § 22.)

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Funds, § 4.

**C.J.S.** — 81A C.J.S., States, §§ 142, 209, 210.

**ALR.** — Retrospective application and effect of statutory provision for interest or changed rate of interest, 4 ALR2d 932.

Validity and construction of state stat-

ute or rule allowing or changing rate of prejudgment interest in tort actions, 40 ALR4th 147.

Retrospective application and effect of state statute or rule allowing interest or changing rate of interest on judgments or verdicts, 41 ALR4th 694.

**20-3-274. Loan discount payments to lenders.**

In order to provide an additional incentive to lenders to broaden their participation in the program and better to assure lenders of receiving a competitive yield on educational loans made under this part, the corporation is authorized to pay to lenders, other than lenders who are schools, a loan discount fee to offset partially initial costs incurred by lenders in interviewing borrowers and in processing borrower applications for loan guaranty. The loan discount payment authorized by this Code section shall be equal to a percentage of the amount of guaranteed loan principal disbursed to a borrower, to be determined and fixed by the corporation; provided, however, that the amount of the loan discount payment shall not exceed 2 percent of the amount of guaranteed loan principal disbursed to the borrower; and provided, further, that the corporation shall not make a commitment to lenders to make loan discount payments under this Code section unless the state has appropriated funds for use by the corporation for the purposes of this Code section and that such appropriated funds plus funds then in and projected to become available to the corporation's state interest subsidy and loan discount fund are deemed to be sufficient to enable the corporation to meet its state interest subsidy and loan discount payment obligations to become due and payable during the period of any fiscal year for which the General Assembly has already enacted an appropriations Act. (Code 1933, § 32-3315, enacted by Ga. L. 1980, p. 835, § 2; Ga. L. 1981, p. 735, § 23.)

**20-3-275. Funds maintained by corporation.**

There are created, but not by way of limitation, the following special funds for the purposes prescribed:

(1) **Loan guaranty fund.** A loan guaranty fund shall be maintained for the security of holders of loans guaranteed by the corporation. The corporation is authorized to guarantee loans pursuant to this part without limitation; provided, however, that the amount of outstanding principal of loans guaranteed plus the principal amount of loans guaranteed but not yet disbursed nor canceled shall not at any time exceed 15 times the loan guaranty fund balance. In determining the amount of loan principal that may be guaranteed at any time by the corporation, however, there shall be excluded from the computation of the required loan guaranty fund balance 80 percent of the amount of outstanding principal of loans guaranteed and 80 percent of the principal amount of loans guaranteed but not yet disbursed nor canceled which are reinsured by the United States pursuant to the federal act. There shall be credited to the loan guaranty fund all moneys required by law to be credited to the fund



and other moneys available for and determined by the corporation to be credited to the fund for the purpose of providing security to the holders of loans guaranteed by the corporation and other purposes authorized in accordance with this part and the federal act. The fund shall be prudently invested by the corporation to the maximum extent possible, subject to requirements of the federal act; and all income derived from investment of the fund shall be credited to the fund. Other income, property, and property rights acquired by the corporation as a result of administration of the fund shall be credited to and become assets of the fund. There shall be paid out of the loan guaranty fund all amounts expended by the corporation in discharge of its guaranty obligations and such other amounts determined by the corporation to be properly payable from the fund. Guaranty fees collected and credited to the fund and income derived from investment of the fund, except as limited by the federal act, may be transferred to the administration fund.

(2) **Administration fund.** An administration fund shall be maintained for administration purposes of the corporation, to which shall be credited state moneys, federal moneys, moneys transferred from the loan guaranty fund or the state interest subsidy and loan discount fund, and other moneys available for and determined by the corporation to be applied for the purpose of paying administration costs of the corporation. The corporation is authorized to pay from the fund to the commission such amounts as may be necessary to cover administration costs of the corporation paid or to be paid by the commission for or on behalf of the corporation. Moneys in the administration fund may be transferred to the loan guaranty fund or to the state interest subsidy and loan discount fund if not prohibited by the federal act.

(3) **State interest subsidy and loan discount fund.** A state interest subsidy and loan discount fund shall be maintained by the corporation for the purpose of making state interest subsidy and loan discount payments to lenders pursuant to Code Sections 20-3-273 and 20-3-274. State funds appropriated for use by the corporation in making such payments to lenders, collections of state interest subsidy loans previously made from the fund on behalf of student borrowers pursuant to Code Section 20-3-274, moneys transferred to the fund from the administration fund or the loan guaranty fund not in conflict with the federal act, and other moneys available for and determined by the corporation to be applied for the purpose of making such state interest subsidy and loan discount payments to lenders shall be credited to and become a part of the fund. In the event that state interest subsidy and loan discount payments to lenders, as provided for in this part, shall be terminated, any remaining fund balance, after payment of outstanding obligations of the fund, shall

be transferred to the administration fund. (Code 1933, § 32-3317, enacted by Ga. L. 1980, p. 835, § 2; Ga. L. 1981, p. 735, § 24.)

**20-3-276. School rights subject to rules and regulations.**

No school and no class, type, or group of “eligible institutions,” as such term is defined in the federal act, shall have a vested right to be approved by the corporation as a “school” for purposes of the program, except in accordance with rules and regulations prescribed by the corporation. (Code 1933, § 32-3318, enacted by Ga. L. 1980, p. 835, § 2; Ga. L. 1981, p. 735, § 25.)

**20-3-277. Lender rights subject to rules and regulations.**

No lender and no class, type, or group of “eligible lenders,” as such term is defined in the federal act, shall have a vested right to be approved by the corporation as a “lender” for purposes of the program, except in accordance with rules and regulations prescribed by the corporation. (Code 1933, § 32-3319, enacted by Ga. L. 1980, p. 835, § 2; Ga. L. 1981, p. 735, § 26.)

**20-3-278. Reports as to loan commitment agreements; statements to borrowers; administration fees; reports of agreement terminations.**

Repealed by Ga. L. 1987, p. 378, § 2, effective April 2, 1987.

**Editor’s notes.** — This Code section enacted by Ga. L. 1980, p. 835, § 2; and was based on Code 1933, § 32-3320, as Ga. L. 1982, p. 3, § 20.

**20-3-279. Persons forbidden to engage in business of furnishing educational loan information or assistance.**

It shall not be permissible for any stockholder, director, officer, employee, agent, commissioned salesman, consultant, or other person in the employment of, or who for a valuable consideration serves the interests of, a lender or a school in this state or the corporation, the commission, or the authority to be engaged in this state in the business of providing, or to have any financial interest in any corporation, association, partnership, or other organization that is engaged in this state in the business of providing, in consideration of the receipt of a fee, commission, charge, or other valuable consideration from any source, contingent or otherwise, to students or parents of students information about or assistance in applying for or obtaining educational loan assistance under this part. (Code 1933, § 32-3321, enacted by Ga. L. 1980, p. 835, § 2.)

**20-3-280. Lender and school audits; program reviews; corrective actions.**

The corporation is authorized:

- (1) To examine and audit accounts and records of lenders and schools relative to educational loans guaranteed by the corporation;
- (2) To conduct program reviews with appropriate officers and personnel of lenders and schools as may be necessary or appropriate to assure compliance by all parties with this part and the federal act; and
- (3) To take or require that such corrective, remedial, or preventive actions be taken as may be necessary or appropriate to protect the interests of the corporation, the United States, lenders, schools, present and future borrowers, and the public at large. (Code 1933, § 32-3322, enacted by Ga. L. 1980, p. 835, § 2.)

**20-3-281. Sale, pledge, or assignment of educational loans.**

A lender may sell loans guaranteed by the corporation, or an interest in such loans, to another lender only in accordance with regulations of the corporation; and in such event the guaranty liability of the corporation on such loans or interests therein shall not be affected. A lender may pledge or assign loans guaranteed by the corporation, or an interest in such loans, as security to pledgees or assignees only in accordance with regulations of the corporation; and in such event the guaranty liability of the corporation on such loans or interests therein shall not be affected. (Ga. L. 1970, p. 478, §§ 6, 7; Ga. L. 1973, p. 650, § 4; Code 1933, § 32-3323, enacted by Ga. L. 1980, p. 835, § 2.)

**20-3-282. Contracted servicing of loans.**

The servicing or collection of educational loans held by a lender may not be contracted to any other lender, person, or entity except in accordance with rules and regulations of the corporation. (Code 1933, § 32-3324, enacted by Ga. L. 1980, p. 835, § 2.)

**20-3-283. Contributions deductible for income tax purposes.**

Notwithstanding any general or special law or any certificate of incorporation, charter, or other articles of organization, all domestic or domesticated corporations, associations, and other taxable entities carrying on business in this state and any person are authorized to make contributions of money, property, or other thing of value to the corporation for any of its corporate purposes; and the value thereof shall



be allowed as a deduction in computing the taxable income of the donor for the purpose of any income tax imposed by the state or by any political subdivision of the state. (Ga. L. 1964, p. 735, § 10; Ga. L. 1965, p. 217, § 11; Code 1933, § 32-3326, enacted by Ga. L. 1980, p. 835, § 2.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 71 Am. Jur. 2d, State and Local Taxation, §§ 518, 543.      **C.J.S.** — 85 C.J.S., Taxation, § 1219.

#### **20-3-284. Exemption of corporation from taxation.**

In that the corporation is a duly created public authority and political subdivision of the state and is performing essential governmental functions in the exercise of its corporate purposes, the state covenants with the holders of educational loans guaranteed by the corporation that the corporation shall not be required to pay and shall be exempt and free from the payment of any taxes and assessments to the state or to any county, municipality, or other political subdivision of the state upon any property acquired by it or held under its jurisdiction or control, whether real, personal, or mixed; upon any loan guaranty or other obligation, agreement, or evidence of indebtedness issued or entered into by it pursuant to this part; upon the transfer by any holder to the corporation or by the corporation to the United States or to any other person or entity of the ownership of any obligation or evidence of indebtedness entered into or executed by any party pursuant to this part; or upon any moneys or income received or held by the corporation. The exemption from taxation provided in this Code section shall not, however, extend to nor include any exemption from sales and use taxes on property purchased by or for the use of the corporation. (Ga. L. 1964, p. 735, § 11; Ga. L. 1965, p. 217, § 12; Ga. L. 1976, p. 415, § 2; Code 1933, § 32-3327, enacted by Ga. L. 1980, p. 835, § 2.)

#### **20-3-285. Exemption of lenders from certain taxation.**

One-half of the outstanding principal amount of loans guaranteed by the corporation and owned by a lender as of January 1 each year shall be deductible from the assets of the lender when determining the value of shares of the lender, or when determining the net worth of the lender, for purposes of any ad valorem taxation imposed on the lender by the state or by any political subdivision of the state. All income earned by a lender on loans guaranteed by the corporation shall be exempt and free from any type of income tax imposed on the lender by the state or by any political subdivision of the state. It shall be the duty of all revenue and tax officials of the state and of political subdivisions of the state to enforce and give full force and effect to this Code section and to the intent, hereby expressed, of the General Assembly better to assure

through this means the accessibility of educational loan funds to local citizens and persons from local lending institutions. (Ga. L. 1964, p. 735, § 11; Ga. L. 1965, p. 217, § 12; Ga. L. 1976, p. 415, § 2; Code 1933, § 32-3328, enacted by Ga. L. 1980, p. 835, § 2.)

**20-3-286. Conflicts of interest involving directors, officers, or employees of corporation.**

If any director, officer, or employee of the corporation shall be interested, either directly or indirectly, or shall be a director, officer, or employee of or have an ownership interest in, other than a noncontrolling stockholder interest, or the substantial equivalent thereof, in a lender or school, any firm or corporation interested, directly or indirectly, in any contract with the corporation, except any agency, instrumentality, or political subdivision of the state, such interest shall be disclosed to and shall be set forth in the minutes of the corporation; and the director, officer, or employee having such interest therein shall not participate on behalf of the corporation or such party in the negotiation or the authorization of the contract. No provision of this part, other than Code Section 20-3-289, shall be construed, however, to prevent any otherwise eligible director, officer, or employee of the corporation or member of his family from being eligible to apply for and receive educational loan assistance under this part. (Code 1933, § 32-3330, enacted by Ga. L. 1980, p. 835, § 2.)

**Cross references.** — Conflicts of interest involving state officers and employees generally, § 45-10-20 et seq.

**20-3-287. Borrowers deemed capable regardless of age.**

For the purpose of applying for, receiving, and repaying any educational loan under this part, all persons of any age shall be deemed to have full legal capacity to act and shall have all the rights, powers, privileges, and obligations of a person of legal age with respect thereto; and any person otherwise qualifying to receive an educational loan under this part shall not be disqualified by reason of age. (Ga. L. 1964, p. 735, § 9; Ga. L. 1965, p. 217, § 10; Ga. L. 1972, p. 193, § 10; Ga. L. 1973, p. 590, § 1; Code 1933, § 32-3333, enacted by Ga. L. 1980, p. 835, § 2.)

**Cross references.** — Exemption from contractual liability of minor, § 13-5-3.

**20-3-288. Proof of residency in state.**

In accordance with the national scope and intent of the United States relative to educational loans as expressed in the federal act, lenders and the corporation are authorized to accept and rely upon a student's or parent's certification of his or her state of legal residence unless the lender or the corporation has and is aware of knowledge to the contrary. (Code 1933, § 32-3334, enacted by Ga. L. 1980, p. 835, § 2; Ga. L. 1981, p. 735, § 27; Ga. L. 1995, p. 961, § 5.)

**20-3-289. Eligibility of students in default for other state student assistance.**

Any student who is indebted to the corporation on a defaulted educational loan obtained under this part shall not be eligible to apply for or receive educational financial assistance available under any other state funded student financial aid program unless the student has made arrangements, satisfactory with the corporation, for the payment of such indebtedness and is in and remains in compliance with such arrangements, or unless the corporation, for reasons which the corporation deems to be justifiable, determines that the existence of the indebtedness to the corporation should not be a bar to the student's applying for and receiving such other state student financial aid assistance. (Code 1933, § 32-3335, enacted by Ga. L. 1980, p. 835, § 2; Ga. L. 1992, p. 6, § 20.)

**20-3-290. Corporation assigned to commission.**

The corporation is assigned to the commission for administrative purposes as prescribed in Code Section 50-4-3. (Ga. L. 1972, p. 1015, § 1902; Code 1933, § 32-3336, enacted by Ga. L. 1980, p. 835, § 2.)

**20-3-291. Termination and dissolution of corporation.**

The corporation and its corporate existence shall continue until terminated by law; provided, however, that no such law shall take effect so long as the corporation shall have obligations outstanding, unless adequate provision has been made for the payment thereof and the holders of all such obligations agree to such provision. This Code section shall be for the benefit of the holders of all such obligations and shall constitute a contract with the holders of such obligations. Upon dissolution of the corporation, all of its assets, rights, and properties shall pass to and be vested in the state to be used for educational purposes. (Ga. L. 1964, p. 735, § 13; Ga. L. 1965, p. 217, § 14; Ga. L. 1968, p. 386, § 7; Code 1933, § 32-3337, enacted by Ga. L. 1980, p. 835, § 2.)



**20-3-292. Venue of proceedings against corporation.**

The venue for any legal proceeding brought against the corporation shall be Fulton County, regardless of the county in which the principal office or any other office of the corporation may be located. (Code 1933, § 32-3338, enacted by Ga. L. 1980, p. 835, § 2.)

**20-3-293. General banking or insurance business by corporation prohibited.**

Nothing contained in this part shall be construed to mean that the corporation is engaged in or is authorized to engage in the general banking or general insurance business. (Code 1933, § 32-3339, enacted by Ga. L. 1980, p. 835, § 2.)

**20-3-294. Operations reports by corporation.**

The corporation is authorized to publish in print or electronically annually, or at more or less frequent intervals determined by the board of directors, an operations report covering the activities of the corporation, including, without limitation, a reporting of revenues and expenditures of the corporation and a statement of the financial condition of the corporation and to furnish copies of such report to the Governor and members of the General Assembly and to other public and private persons and agencies as it may deem appropriate. If operations reports are published on an annual basis, the corporation is authorized to publish them in print or electronically on a state fiscal year, federal fiscal year, or calendar year basis. (Code 1933, § 32-3340, enacted by Ga. L. 1980, p. 835, § 2; Ga. L. 2010, p. 838, § 10/SB 388.)

**The 2010 amendment**, effective June 3, 2010, inserted “in print or electronically” in two places in this Code section.

**Code Commission notes.** — Pursuant to Code Section § 28-9-5, in 2010, the word “them” in the last sentence was moved before the newly added phrase “in print or electronically”.

**20-3-295. Corporation to maintain certified list of borrowers in default; administrative hearings; appeals.**

(a) As used in this Code section, the term:

(1) “Agency” means the Georgia Higher Education Assistance Corporation created in Code Section 20-3-263 which is responsible for administering a program of guaranteed educational loans to eligible students and eligible parents known as the Georgia Higher Education Loan Program.

(2) “Applicant” means any person applying for issuance or renewal of a license.

(3) “Borrower” means an individual who borrowed a guaranteed educational loan under the Georgia Higher Education Loan Program.

(4) “Certified list” means a list provided by the agency of the names of borrowers who default on guaranteed educational loans made under the Georgia Higher Education Loan Program and are not in a satisfactory repayment status; provided, however, the term default shall not include any obligation which is restructured or which is discharged under hardship provisions under the federal Bankruptcy Code.

(5) “Default” means default as defined by federal law under the Higher Education Act of 1965.

(6) “License” means a certificate, permit, registration, or any other authorization issued by any licensing entity that allows a person to engage in a profession, business, or occupation.

(7) “Licensee” means any person holding a license.

(8) “Licensing entity” means any state agency, department, or board of this state which issues or renews any license, certificate, permit, or registration to authorize a person to engage in a profession, business, or occupation, including those under Article 3 of Chapter 7 of Title 2, the “Georgia Pesticide Use and Application Act of 1976”; Article 13 of Chapter 1 of Title 7, relating to mortgage lenders and mortgage brokers; Chapter 5 of Title 10, the “Georgia Uniform Securities Act of 2008,” relating to securities salespersons and investment adviser representatives; Part 2 of Article 1 of Chapter 6 of Title 12, relating to foresters; Chapter 4 of Title 26, relating to pharmacists; Chapter 23 of Title 33, relating to insurance agents, counselors, and other personnel; Chapter 1 of Title 43, relating to professions and businesses; Chapter 39A of Title 43, relating to real estate appraisers; or Chapter 40 of Title 43, relating to real estate brokers and salespersons.

(9) “Satisfactory repayment status” means the borrower has agreed to repay the defaulted loan to the agency and has made a payment in the most recent prior 60 days.

(b) The agency shall maintain a state-wide certified list of borrowers in default who have not made satisfactory arrangements to ensure voluntary repayment. The certified list must be updated on a monthly basis. The agency shall submit to each licensing entity a certified list with the name, social security number, if known, date of birth, and last known address of each person on the list.

(c) On or before January 1, 1999, all licensing entities shall implement procedures to accept and process the list provided by the agency in accordance with this Code section. Such procedures should be

substantially similar if not identical to those implemented to comply with Code Section 19-11-9.3.

(d) Promptly after receiving the certified list from the agency, all licensing entities shall determine whether an applicant or licensee is on the most recent certified list. If an applicant or licensee is on the certified list, the licensing entity shall immediately notify the agency. That notification shall include the applicant's or licensee's last known mailing address on file with the licensing entity.

(e) After receiving notice from the licensing entity of applicants or licensees who are on the certified list, the agency shall immediately notify those individuals as specified in subsection (f) of this Code section of the agency's intent to request that all pertinent licensing entities suspend all licenses or withhold issuance or renewal of any license.

(f) Notice for purposes of this Code section shall be initiated by the agency. Notice to the borrower in default shall include the address and telephone number of the agency and shall inform the borrower in default of the agency's intent to submit the borrower's name to the relevant licensing entities and to request that the relevant licensing entities withhold issuance or renewal of the license or suspend the license. The notice must also inform the borrower in default of the following:

(1) The borrower in default has 20 days from the date of mailing to enter into a satisfactory repayment status. If the borrower in default fails to enter into a satisfactory repayment status or does not respond within that time, the agency will send notice to the appropriate licensing entities and request that the licenses be suspended or the licensure applications be denied;

(2) The borrower in default may request an administrative hearing and judicial review of that hearing under subsection (g) of this Code section. A request for a hearing must be made in writing and must be received by the agency within 20 days of service of notice; and

(3) If the borrower in default requests a hearing within 20 days of service, the agency shall stay all action pending the hearing and any appeals.

(g) All borrowers in default subject to the sanctions imposed in this Code section shall have the right to a hearing before an administrative law judge of the Office of State Administrative Hearings pursuant to Article 2 of Chapter 13 of Title 50. A borrower in default who requests a hearing within the time prescribed in subsection (f) of this Code section shall have the right to a hearing. The hearing shall be conducted as provided in Article 2 of Chapter 13 of Title 50 within 45 days after



such demand is received. The only issues at the hearing will be whether:

- (1) There is an outstanding guaranteed educational loan;
- (2) The licensee or applicant is the borrower named in the loan;
- (3) The borrower is or is not in default;
- (4) The borrower has entered into a satisfactory repayment status;
- (5) The loan obligation is not enforceable; and
- (6) The loan has been restructured or the loan has been discharged under hardship provisions under the federal Bankruptcy Code.

With respect to the issues listed in this subsection, evidence relating to the ability and willingness of a borrower to repay the loan shall be considered in making the decision either to suspend a license or deny the issuance or renewal of a license under this Code section. The administrative law judge shall be authorized to enter into an agreement or enter an order requiring periodic payments, and, in each event, the administrative law judge shall be authorized to issue a release for the borrower to obtain each license or licenses.

(h) The decision at the hearing shall be subject to appeal and judicial review pursuant to Article 2 of Chapter 13 of Title 50 but only as to those issues referred to in subsection (g) of this Code section. Notwithstanding any hearing requirements for suspension and denials within each licensing entity, the hearing and appeal procedures outlined in this Code section shall be the only hearing required to suspend a license or deny the issuance or renewal of a license under this Code section.

(i) The agency shall prescribe release forms for its use. When the borrower is determined to be in satisfactory repayment status or is determined to be not in satisfactory repayment status but has been determined in a hearing pursuant to subsection (g) of this Code section to be unable to comply with the terms of the loan agreement or to be not willfully out of compliance with such loan agreement, the agency shall mail to the borrower in default and the appropriate licensing entity a notice of release stating such determination. The receipt of a notice of release shall serve to notify the borrower in default and the licensing entity that, for the purpose of this Code section, he or she is in satisfactory repayment status, and the licensing entity shall promptly thereafter issue or reinstate the license, unless the agency, pursuant to subsection (b) of this Code section, certifies subsequent to the issuance of a notice of release that the borrower in default is once again not in satisfactory repayment status.

(j) The agency may enter into interagency agreements with state agencies that have responsibility for the administration of licensing

entities as necessary to implement this Code section. Those agreements shall provide for the receipt by other state agencies and boards of federal funds to cover that portion of costs allowable under federal law and regulation and incurred by state agencies and boards in implementing this Code section.

(k) Any licensing entity receiving an inquiry as to the license status of an applicant who has had an application for issuance or renewal of a license denied under this Code section shall respond only that the license was suspended or the licensure application was denied pursuant to this Code section.

(l) The agency shall, and the licensing entities as appropriate may, adopt regulations necessary to implement this Code section. (Code 1981, § 20-3-295, enacted by Ga. L. 1998, p. 1094, § 6; Ga. L. 1999, p. 81, § 20; Ga. L. 1999, p. 329, § 6; Ga. L. 2008, p. 381, § 10/SB 358; Ga. L. 2009, p. 8, § 20/SB 46.)

**Cross references.** — Suspension or denial of check cashing license to student borrowers in default and not in satisfactory repayment status, § 7-1-707.1. Grounds for refusing to grant or revoking

licenses by state examining boards, § 43-1-19. Borrowers in default, § 43-39A-14. Suspension of licenses for borrowers in default, § 43-40-15.

## PART 3

### GEORGIA STUDENT FINANCE AUTHORITY

#### OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarities of the statutory provisions, decisions under former Ga. L. 1969, p. 683, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this part.

**State Department of Human Re-**

**sources (now known as the Department of Human Services) may receive funds from the authority;** there is no requirement that the recipient be a state employee or repay the scholarship by working in Georgia. 1971 Op. Att'y Gen. No. 71-147 (decided under former Ga. L. 1969, p. 683).

## Subpart 1

### General Provisions

#### 20-3-310. Short title.

This part shall be known and may be cited as the "Georgia Student Finance Authority Act." (Code 1933, § 32-3701, enacted by Ga. L. 1980, p. 835, § 3.)

**20-3-311. Legislative findings; purposes of authority.**

(a) **Legislative findings.** The General Assembly finds that the growth and development of this state and nation have been and will undoubtedly remain strongly related to the degree to which educational opportunities are provided to all of their citizens; recognizes that costs associated with postsecondary educational opportunities are substantial when considered in relation to the average earnings and wealth of most families and that such costs are in many cases prohibitive; and determines that it is a valid public purpose to promote the educational level of achievement and the welfare and general prosperity of the state and nation as a whole by creating the Georgia Student Finance Authority, a public authority, for the purpose of providing educational scholarship, grant, and loan assistance to students and their parents. The General Assembly further finds that substantial investments of public and private moneys have been made and will undoubtedly continue to be made in the construction, development, and operation of public and private postsecondary educational institutions; that such postsecondary educational institutions are of immense value to the state and nation in that they promote the general welfare and the economic and cultural development and prosperity of the state and nation and all their citizens; that it is in the public interest to sustain such institutions; and, therefore, that the provision of educational scholarship, grant, and loan assistance to persons who desire to attend such educational institutions will be of substantial financial benefit to those institutions and will better ensure their continued economic viability and value to the state and nation. The General Assembly therefore determines that public moneys may within the provisions of the Constitution of Georgia be appropriated for use by the authority for the student aid purposes prescribed in this part and that the carrying out by the authority of its corporate powers, duties, and functions as provided for in this part is in all respects a necessary and valid public purpose within the Constitution of Georgia.

(b) The purposes of the authority shall be to improve higher educational opportunities by providing educational scholarship, grant, and loan assistance and to further other public purposes by loan forgiveness programs in specified circumstances, all as prescribed and as provided for in this part. (Code 1933, § 32-3702, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 1995, p. 961, § 6; Ga. L. 2002, p. 1115, § 2.)

**Law reviews.** — For note on the 2002 amendment of this Code section, see 19 Ga. St. U. L. Rev. 158 (2002).



**20-3-312. Definitions.**

As used in this part, the term:

(1) "Authority" means the Georgia Student Finance Authority created by Code Section 20-3-313.

(2) "Authorized officer" means the chairperson, vice chairperson, executive director or president, treasurer, secretary, or other person authorized by this part, resolution of the board of directors, agreements entered into by the board of directors or the authority, or bylaws of the authority to act as an authorized officer of the authority for any prescribed purpose.

(3) "Board of directors" means the board of directors of the authority.

(4) "Borrower" means an eligible student or eligible parent who has obtained an educational loan under this part or from a lender under Part 2 of this article.

(5) "Commission" means the Georgia Student Finance Commission created by Code Section 20-3-233.

(6) "Corporation" means the Georgia Higher Education Assistance Corporation created by Code Section 20-3-263.

(7) "Directory information" means the present or last known name, address, and place of employment; social security number; telephone number; school enrollment status; academic classification and standing; actual or anticipated date of graduation, withdrawal from, or transfer to another school; other educational loan indebtedness; and other financial aid available to, and other similar data as the case may be and as may be applicable to, an applicant for or the recipient of scholarship or grant assistance under this part or to a borrower, comaker, cosigner, endorser, or person or credit reference named on an application for loan guaranty submitted to a lender under Part 2 of this article, and the spouse thereof.

(8) "Federal act" means all provisions of federal statutes which provide federal funds for any student financial aid purpose or for any activity related to student financial aid and federal statutes relative to programs of low-interest educational loans to students and parents administered in whole or in part by the secretary, including but not limited to the federal Higher Education Act of 1965 (P.L. 89-329), as amended, and all rules and regulations prescribed by the secretary pursuant thereto.

(9) "Federal interest subsidies" means the interest subsidy payments on educational loans provided for in the federal act.

(10) “Guaranty agency” means the corporation or any other state or nonprofit institution or organization with which the United States Department of Education has an agreement under the federal act.

(11) “Guaranty fee” means the insurance premium charge on educational loans authorized by Code Section 20-3-271 or the federal act.

(12) “Lender” means a “lender” as defined in paragraph (12) of Code Section 20-3-262 or as prescribed by the federal act.

(13) “Loan” or “educational loan” means an obligation representing advances of money by a lender to an eligible student or eligible parent evidenced by one or more promissory notes, on note forms prescribed by any guaranty agency, as prescribed by the federal act. In the event of the purchase and sale or the pledge or assignment of such loans or a participating interest in such loans, the term shall include contingent interests, security interests, pledges, commitments, choses in action, or other property interests in such loans.

(14) “Loan guaranty” means the document or endorsement issued by any guaranty agency, as prescribed by the federal act, as evidence of the guaranty by the corporation of an educational loan to be made by a lender to an eligible student or eligible parent. The term “guaranty,” when used in this part, shall have the same meaning as “insurance” as such term is used in the federal act and shall be synonymous therewith.

(15) “Parent” or “eligible parent” means a parent of an eligible student who qualifies for an educational loan under the federal act and regulations prescribed by the authority.

(16) “Part” means this part, including rules and regulations prescribed by the board of directors pursuant thereto.

(17) “Secretary” means the United States secretary of education or any official succeeding to the powers of such secretary under the federal act.

(18) “Special allowance payments” means the special allowance payments on educational loans provided for in the federal act. (Code 1933, § 32-3703, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 1981, p. 735, §§ 28-32; Ga. L. 1995, p. 961, § 7; Ga. L. 2003, p. 158, § 4; Ga. L. 2004, p. 441, § 1.)

**U.S. Code.** — The federal Higher Education Act of 1965, referred to in paragraph (8) of this Code section, is codified at 20 U.S.C. § 1001 et seq.

**20-3-313. Authority created as successor to Georgia Higher Education Assistance Authority.**

(a) There is created a public authority, a body corporate and politic, to be known as the Georgia Student Finance Authority, which shall be deemed to be an instrumentality and a nonprofit public corporation of the state.

(b) The authority created by subsection (a) of this Code section shall be the successor to and a continuation of, without interruption, the previously existing Georgia Higher Education Assistance Authority created by an Act approved April 25, 1969 (Ga. L. 1969, p. 683), as amended. The change of the name of the Georgia Higher Education Assistance Authority to the Georgia Student Finance Authority and its continuation, as provided in this Code section, shall in no way affect any existing obligations, liabilities, or rights of the previously existing Georgia Higher Education Assistance Authority. All such obligations, liabilities, and rights are transferred to, vested in, and assumed by the authority created by subsection (a) of this Code section. All existing contracts and agreements between any party and the previously existing Georgia Higher Education Assistance Authority shall not be affected by this Code section but shall continue in full force and effect, without interruption, as contracts or agreements between such party and the authority created by subsection (a) of this Code section.

(c) Right, title, interests in, and ownership of all assets of the previously existing Georgia Higher Education Assistance Authority are transferred to and vested in the authority created by subsection (a) of this Code section; provided, however:

(1) That educational loan accounts, other than educational loan trust fund account moneys; moneys collected thereon; income earned thereon; state funds appropriated therefor; moneys derived therefrom; and contracts, contract rights, and choses in action in respect thereof shall be used by the authority for educational loan and operating expense purposes provided for in Subpart 3 of this part;

(2) That educational loan trust fund assets and earnings thereon shall be used in accordance with the terms of agreements entered into in respect thereof; and

(3) That all moneys appropriated before April 7, 1981, by the state for use by the authority for the purpose of providing designated types of scholarship or grant assistance to students pursuant to provisions of law existing prior to July 1, 1980, shall be used only for the purpose of providing the same type of designated scholarship or grant assistance to students in accordance with the provisions of this part relative to such designated scholarship or grant purposes. (Ga. L.



1969, p. 683, § 3; Code 1933, § 32-3704, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 1981, p. 735, § 33.)

**Editor's notes.** — The act creating the former Georgia Higher Education Assistance Authority, referred to in subsection

(b) of this Code section, was repealed by Ga. L. 1980, p. 835, § 5.

### RESEARCH REFERENCES

**C.J.S.** — 81A C.J.S., States, §§ 141, 155, 297, 298.

### **20-3-314. Functions, composition, organization, and conduct of affairs of board of directors.**

(a) **Functions and composition.** The authority shall be governed and all of its corporate powers, duties, and functions shall be exercised by a board of directors. The board of directors shall be composed of 13 members, who shall be the same persons who are serving and who shall serve as members of the board of commissioners of the commission pursuant to Code Section 20-3-234. The executive director of the authority, or president, if designated by such title by the board of directors, shall be an ex officio member of the board of directors. The board of directors provided for by this subsection shall be the successor to and a continuation of, without interruption, the board of directors of the previously existing Georgia Higher Education Assistance Authority. No director shall be eligible to become an officer or employee of the authority for a period of one year after expiration of the director's period of service as a director of the authority.

(b) **Organization and conduct of affairs.** Subsections (c) through (h) of Code Section 20-3-234, pertaining to the commission and relative to officers of the board of commissioners, meetings of the board of commissioners, executive committee, other committees, compensation of commissioners, and advisory councils, inclusively, are incorporated by reference into this subsection and shall apply to the board of directors in the same manner as if fully set out, with conformable language, in this subsection. The board of directors shall organize and conduct its affairs in accordance with such provisions of law; provided, however:

(1) That nothing in this Code section shall be construed to mean that the board of directors must elect the same persons to serve as officers of the board of directors as are elected by the board of commissioners of the commission to serve as officers of the board of commissioners;

(2) That no person serving as a public commissioner of the commission and thereby as a director of the authority shall receive more

than one day's per diem plus actual expenses incurred for one day's service or portion thereof rendered to the state; and

(3) That the limitation as to the number of days during any fiscal year that per diem may be paid to a public commissioner of the commission shall be inclusive of services rendered by such person as a director of the authority. (Ga. L. 1969, p. 683, § 4; Ga. L. 1971, p. 518, § 1; Code 1933, § 32-3705, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 2003, p. 158, § 5.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, §§ 263, 346. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 92.

**C.J.S.** — 81A C.J.S., States, §§ 141, 142, 151, 229, 311.

#### 20-3-315. Authority officers and employees; bonds.

The executive director of the commission, or president, if designated by such title by the board of commissioners, shall serve as the executive director or president, if designated by such title by the board of directors, and chief executive officer of the authority. The executive director shall provide for maintenance of accurate and permanent minutes and records of all proceedings and activities of the board of directors and the authority and have authority and responsibility to implement and carry out all administrative powers, duties, and functions of the authority in accordance with governing state and federal laws and rules, regulations, and policies prescribed by the board of directors. The treasurer of the commission shall serve as treasurer of the authority. The treasurer shall receive and disburse all funds made available to or for the use of the authority by the General Assembly or otherwise in accordance with law and as may be directed by the board of directors. The secretary of the commission shall serve as secretary of the authority. Other officers of the commission who are assigned duties and responsibilities relative to the purposes of the authority may be designated as officers of the authority. The foregoing officers and all other employees, professional personnel, agents, experts, consultants, and persons employed or retained by the commission who are assigned duties and responsibilities relative to the purposes of the authority shall perform such assigned duties and responsibilities in accordance with this part. Fidelity bond coverage of officers, employees, and members of the commission provided pursuant to paragraph (4) of Code Section 20-3-235 and covering such persons who are performing duties and responsibilities relative to the authority pursuant to this part shall also be conditioned as to the insured and in such respects and for such sums as the board of directors determines necessary to protect the

interests of the authority. (Code 1933, § 32-3706, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 1982, p. 3, § 20; Ga. L. 2003, p. 158, § 6.)

**20-3-316. Powers and duties of authority; employees' functions; servicing of educational loans; registration with Selective Service System; conflicts with federal or other state law.**

In addition to all other provisions of this part as set forth in each subpart of this part and in furtherance of the purposes of the authority, the authority shall have the following general powers, duties, and functions:

(1) The authority shall establish and administer each student assistance program provided for in the respective subparts of this part in accordance with the provisions of this part. Pursuant thereto, the authority is further authorized:

(A) To adopt rules, regulations, and policies necessary, appropriate, or convenient for the administration of its affairs; the execution of its powers, duties, and functions; and the accomplishment of its corporate purposes, as prescribed in each subpart of this part;

(B) To receive all moneys made available by the General Assembly or otherwise for the purposes of the authority and to use such moneys in accordance with the subparts of this part;

(C) To administer federal funds allotted to the authority or to the state for use by the authority in respect of student financial aid programs provided for in federal laws, related matters, and related administrative costs;

(D) To enter into contracts and agreements with schools upon such terms and conditions as may be prescribed by the authority or otherwise agreed upon between the authority and the school, not inconsistent with this part, applicable state or federal law, or agreements entered into between the authority and any federal or state agency;

(E) To require that schools located in the state shall designate one or more persons who shall be responsible for receiving and controlling and disbursing, delivering, or crediting to accounts, as the case may be, student aid checks or funds that are required to be or which may optionally be disbursed to, delivered to, or otherwise provided to the school under this part, for further disbursement, delivery, or credit to the account of students enrolled therein; and to provide for matters relative thereto;

(F) To require that schools located in the state or, with approval of the authority, a combination of schools jointly shall provide



fidelity bond coverage of school employees who have access to checks or funds that may be routed through the school under this part to students enrolled therein, in such sums and conditioned in such respects and as to the insured as may be reasonably necessary to protect the interests of the authority; and to provide for matters relative thereto;

(G) To provide for remittance to and proper application by the authority of school refunds to students who are recipients of financial assistance provided by the authority under this part, consistent with the requirements of any other federal or state law, rule, or regulation which provides financial aid to students; and to provide for the application of school refunds relative to those programs;

(H) To limit, suspend, or terminate the participation of a school in any financial assistance program administered by the authority, in accordance with rules and regulations of the authority that are consistent with this part, applicable state or federal laws, and agreements entered into between the authority and the school or any federal or state agency; and to provide for such formal and informal procedures in regard thereto as may be appropriate;

(I) To require that reports, in such form and containing such information as the authority may prescribe, be furnished to the authority by schools as it may deem necessary for the effective performance of its powers, duties, and functions under this part;

(J) To require that such administrative and fiscal procedures be used by the authority and schools as may be necessary to protect the financial interests of the authority and to ensure proper and effective administration of programs administered by the authority;

(K) To keep and maintain, and to require that schools keep and maintain, such records as may be determined to be necessary for proper and efficient administration of the programs under this part; and to require that such school records be made available to employees of the authority for examination and inspection as may be necessary or appropriate;

(L) To secure data, except where specifically prohibited by state or federal law, from any state agency, department, instrumentality, political subdivision of the state, or any other source, for the purpose of verifying information submitted by a student or a parent when applying for or receiving any financial assistance provided by the authority under this part; and to pay costs incurred by the provider of such data;

(M) Except where specifically prohibited by state or federal law, to obtain from each state agency, department, instrumentality, and

political subdivision information contained in its records relative to the present or last known address and telephone number of a borrower, comaker, cosigner, or endorser, identified to the provider by name and social security number, and to pay costs incurred by the provider of such information; and each state agency, department, instrumentality, and political subdivision is authorized and directed to provide the information specified in this subparagraph to the authority upon its request;

(N) To gather information on all educational financial assistance funds available from any source to residents of the state and to disseminate such information through such methods of mass or individual communication as may be necessary better to assure that students and parents are aware of the availability of such financial resources;

(N.1) To advertise or otherwise promote the programs, functions, and purposes of the authority and to expend funds available to the authority for such purposes;

(O) To receive funds from any source, public or private, by gift, grant, bequest, loan, or otherwise, either absolutely or in trust, and to hold, use, administer, and expend such funds on its behalf and for any of its corporate purposes; and to acquire from any source, public or private, by purchase, lease, gift, bequest, or devise, any property, real, personal, or mixed, either absolutely or in trust, and to hold, use, administer, and dispose of such property on its behalf and for any of its corporate purposes;

(P) To provide procedures for the filing, hearing, and determination of an appeal made by an aggrieved party of a decision made by the authority in the administration of financial assistance programs provided for in this part and for all matters relative thereto;

(Q) To enter into agreements and undertakings as may be necessary or appropriate in the exercise of its powers, duties, and functions under this part;

(R) To perform such other acts as may be necessary or appropriate to carry out effectively the purposes of the authority under this part;

(S) To adopt an official seal and alter the seal at its pleasure;

(T) To maintain a principal office and such other offices as may be appropriate;

(U) To adopt bylaws and policies for the regulation of its affairs and the conduct of its business;

(V) To bring and defend actions in the name of the authority and to plead and be impleaded;

(W) To do any and all things necessary, desirable, convenient, or incidental for the accomplishment of the objectives of this chapter and to exercise any power usually possessed by private corporations performing similar functions which is not in conflict with the public purposes of the authority or the Constitution and laws of this state, including, but not limited to:

(i) The power to retain accounting and other financial services;

(ii) The power to purchase all kinds of insurance, including, without limitation, insurance against tort liability and against risks of damage to property;

(iii) The power to indemnify and hold harmless any parties contracting with the authority or its agents from damage to persons or property; and

(iv) The power to act as a self-insurer with respect to any loss or liability and to create insurance reserves; and

(X) To appoint officers, agents, and employees, to prescribe their duties and qualifications, and to fix their compensation;

(2) Employees of the authority may perform management, supervisory, administrative, and clerical functions required by the commission and the corporation, and the authority will be compensated for such expenses as directed by the board of commissioners;

(3) To service or contract for the servicing of educational loans, including the servicing of such loans by the authority on behalf of others, to contract in advance for the servicing of educational loans, and to contract for the performance by the authority of educational loans;

(4) Each applicant who, as of the date of application for financial assistance under this part, is required but has not registered with the Selective Service System of the United States pursuant to 50 U.S.C. Section 453, as amended, shall be ineligible to receive financial assistance under this part. Each applicant shall, under penalty of perjury, certify compliance or noncompliance with the registration requirements of the Military Selective Service Act of the United States and provide such other information as the authority may reasonably require. A person may not be denied state student financial aid by reason of failure to present himself for and submit to registration under Section 3, 50 U.S.C. Appx. Section 453, if the requirement for the person to so register has terminated or become inapplicable to the person; and the person shows by a preponderance of the evidence that the failure of the person to register was not a knowing and willful failure to register;



(5) If any conflict exists between this part and Part 2 of this article, the federal act, or other federal laws, or any rules or regulations promulgated under the federal act, which conflict will result in a loss by the authority of any federal funds or other funds that would otherwise be available to it for carrying out its purposes under this part, the authority is authorized and directed to adopt appropriate rules, regulations, and policies, consistent with Part 2 of this article, the federal act, or such other federal laws to remove such conflict and thereby to provide for the receipt of such funds; provided, however, that such rules, regulations, or policies are not in derogation of the Constitution or laws of this state, other than this part, or any contract to which the authority is a party and are wholly in conformity with the purposes of the authority as set forth in this part; and

(6) To the extent that this part is inconsistent with any other state general or special law, rule, or regulation, other than Part 2 of this article, this part shall be controlling. (Code 1933, § 32-3707, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 1981, p. 735, § 34; Ga. L. 1986, p. 759, § 2; Ga. L. 1992, p. 6, § 20; Ga. L. 1992, p. 1001, §§ 4, 5; Ga. L. 1995, p. 961, § 8; Ga. L. 1996, p. 837, §§ 3, 4; Ga. L. 2003, p. 904, § 1.1; Ga. L. 2005, p. 1134, § 2/HB 298.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1986, the second reference to “of this part” was substituted for “hereof” in the introductory language.

Pursuant to Code Section 28-9-5, in 1987, “under the federal act” was substituted for “thereunder” near the beginning of paragraph (3) (now paragraph (5)).

Pursuant to Code Section 28-9-5, in 1996, a semicolon was substituted for a period at the end of paragraph (2).

Pursuant to Code Section 28-9-5, in 2003, “Section” was inserted in the third sentence of paragraph (4).

## JUDICIAL DECISIONS

**Editor’s notes.** — In light of the similarity of the statutory provisions, a decision under former Code 1933, § 32-3706, which was subsequently repealed but was succeeded by provisions in this Code section, is included in the annotations for this Code section.

**Loan default resulting from collegiate discontinuation no defense.** — It is not a valid defense to an action to recover on teacher scholarship loan notes

that the defendant recipient’s default in the terms of the loan agreement, by discontinuing a course or program of study for which the student was receiving scholarship aid, resulted from the student’s involuntary discontinuation by the authorities of the college at which the student was enrolled. *Swindell v. Georgia State Dep’t of Educ.*, 138 Ga. App. 57, 225 S.E.2d 503 (1976) (decided under former Code 1933, § 32-3706).

## RESEARCH REFERENCES

**C.J.S.** — 81A C.J.S., States, § 228.

**20-3-317. Accounting system; use of funds; payments to commission.**

The authority shall maintain a system of accounts in accordance with generally accepted accounting procedures and standard accounting procedures and systems established by the state, where applicable, which shall, among other things, properly identify and account for all funds received by the authority, the source of such funds, and all expenditures of the authority. Agency, federal, and other funds of the authority determined to be available for such purposes may be used to pay expenses and operating costs incurred by the authority or incurred by the corporation under Part 3 of this article, including payment to the commission to defray expenses and operating costs of the authority or of the corporation paid or to be paid by the commission for or on behalf of the authority or the corporation. No funds of the authority shall lapse to the state as of the close of any fiscal year. (Code 1933, § 32-3708, enacted by Ga. L. 1980, p. 835, § 3.)

**20-3-318. Authority administration fund.**

The authority shall maintain an administration fund for itself and of the corporation as provided for in this Code section to which shall be credited state moneys, federal moneys, other moneys, and earned income of the authority available for and determined by the authority to be applied for the purpose of paying administration costs of the authority. The authority is authorized to pay from the fund administration costs incurred by the authority and to pay to the commission such amounts as may be necessary to cover administration costs of the authority paid or to be paid by the commission for or on behalf of the authority. Unless otherwise prohibited by state or federal law or by the terms of any trust agreement entered into or resolution providing for the issuance of obligations pursuant to Subpart 2 of this part or by the terms of any other agreement entered into by the authority, the authority is authorized to pay from the fund administration costs incurred by the corporation and pay to the commission such amounts as may be necessary to cover administration costs of the corporation paid or to be paid by the commission for or on behalf of the corporation. (Code 1933, § 32-3709, enacted by Ga. L. 1980, p. 835, § 3.)

**20-3-319. Temporary transfer of authority state funds to corporation to accelerate federal payments.**

In the event the United States makes the federal payments referred to in Code Section 20-3-272 to lenders through the corporation, any available state funds appropriated for use by the authority during any fiscal year for purposes of any financial assistance program provided for

in this part may be temporarily transferred by the authority to the corporation for use by the corporation for the purposes prescribed in Code Section 20-3-272 pending receipt by the corporation of the federal payments. Upon receipt of the federal payments, the corporation shall transfer back to the authority the amount of funds previously received by it from the authority. (Code 1933, § 32-3710, enacted by Ga. L. 1980, p. 835, § 3.)

#### **20-3-320. Audits of authority; distribution of audit reports.**

The state auditor shall make an annual financial audit of the books, accounts, and records of the authority. The state auditor shall maintain a copy of the audit report on file in his or her office, make copies of the report available for inspection by the general public, and furnish a copy of the report to the authority, to members of the board of directors of the authority, to the Governor, and to such other persons as may be required pursuant to Subpart 2 of this part and shall notify the members of the General Assembly of the availability of the report in the manner which he or she deems to be most effective and efficient. The authority is further authorized to have independent audits made of such books, accounts, and records of the authority as may be required pursuant to Subpart 2 of this part. (Ga. L. 1969, p. 683, § 46; Code 1933, § 32-3725, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 2005, p. 1036, § 17/SB 49.)

#### **20-3-321. School audits; program reviews; corrective actions.**

The authority is authorized:

(1) To examine and audit accounts and records of schools relative to financial assistance provided to students enrolled therein under this part;

(2) To conduct program reviews with appropriate officers and personnel of schools as may be necessary or appropriate to assure compliance with this part; and

(3) To take or require that such corrective, remedial, or preventive actions be taken as may be necessary or appropriate to protect the interests of the authority, the state, the United States, schools, students, and the public at large. (Code 1933, § 32-3712, enacted by Ga. L. 1980, p. 835, § 3.)

#### **20-3-322. Contributions deductible for tax purposes.**

Notwithstanding any general or special law or any certificate of incorporation, charter, or other articles of organization, all domestic or



domesticated corporations, associations, and other taxable entities carrying on business in this state and any person are authorized to make contributions of money, property, or other thing of value to the authority for any of its corporate purposes. The value of such contribution shall be allowed as a deduction in computing the taxable income of the donor for the purpose of any income tax imposed by the state or by any political subdivision of the state. (Ga. L. 1969, p. 683, § 44; Code 1933, § 32-3713, enacted by Ga. L. 1980, p. 835, § 3.)

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 71 Am. Jur. 2d, State and Local Taxation, §§ 518, 543.      **C.J.S.** — 85 C.J.S., Taxation, § 1219.

### **20-3-323. Conflicts of interest involving directors, officers, or employees of authority.**

If any director, officer, or employee of the authority shall be interested, either directly or indirectly, or shall be a director, officer, or employee of or have an ownership interest in, other than a noncontrolling stockholder interest, or the substantial equivalent thereof, in a lender or school, any firm or corporation interested, directly or indirectly, in any contract with the authority, except any agency, instrumentality, or political subdivision of the state, such interest shall be disclosed to and shall be set forth in the minutes of the authority; and the director, officer, or employee having such interest therein shall not participate on behalf of the authority or such party in the negotiation or the authorization of the contract. No provision of this part shall be construed, however, to prevent any otherwise eligible director, officer, or employee of the authority or member of his family from being eligible to apply for and receive financial aid assistance provided for under this part. (Code 1933, § 32-3715, enacted by Ga. L. 1980, p. 835, § 3.)

**Cross references.** — Conflicts of interest involving state officers and employees generally, § 45-10-20 et seq.

### **20-3-324. Authority assigned to commission.**

The authority created by subsection (a) of Code Section 20-3-313 is assigned to the commission created by subsection (a) of Code Section 20-3-233 for administrative purposes as prescribed in Code Section 50-4-3. (Ga. L. 1972, p. 1015, § 1903; Code 1933, § 32-3720, enacted by Ga. L. 1980, p. 835, § 3.)

**20-3-325. Dissolution of authority.**

Upon dissolution of the authority, all of its assets, rights, and property shall pass to and be vested in the state to be used for educational purposes, subject to Code Section 20-3-357. (Code 1933, § 32-3721, enacted by Ga. L. 1980, p. 835, § 3.)

**20-3-326. Venue of proceedings against authority.**

The venue for any legal proceeding brought against the authority shall be Fulton County, regardless of the county in which the principal office or any other office of the authority may be located. (Ga. L. 1969, p. 683, § 38; Code 1933, § 32-3722, enacted by Ga. L. 1980, p. 835, § 3.)

**20-3-327. General banking business by authority prohibited.**

Nothing contained in this part shall be construed to mean that the authority is engaged in or is authorized to engage in the general banking business. (Ga. L. 1969, p. 683, § 43; Code 1933, § 32-3723, enacted by Ga. L. 1980, p. 835, § 3.)

**20-3-328. Operations reports by authority.**

The authority is authorized to publish in print or electronically annually, or at more or less frequent intervals determined by the board of directors, an operations report covering the activities of the authority, including, without limitation, a reporting of revenues and expenditures of the authority and a statement of the financial condition of the authority, and to furnish copies of such report to the Governor and members of the General Assembly and to other public and private persons and agencies as it may deem appropriate. The authority is further authorized to prepare and publish in print or electronically such other reports as may be required pursuant to Subpart 2 of this part. (Code 1933, § 32-3724, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 2010, p. 838, § 10/SB 388.)

**The 2010 amendment**, effective June 3, 2010, inserted “in print or electronically” in two places in this Code section.

**20-3-329. Employees of commission transferred to authority; status of authority employees hired after July 1, 1996; status of transferred employees; benefits of transferred employees not impaired.**

(a) All employees of the commission shall, on July 1, 1996, become employees of the authority, subject to the operating needs of the

authority. Any employees of the commission whom the director gives the opportunity to elect to be transferred to the authority on July 1, 1996, shall be subject to the operating needs of the authority.

(b) Except for persons who transfer to the authority pursuant to subsection (a) of this Code section, no person who becomes an employee of the authority on or after July 1, 1996, shall be considered a state employee, no such person shall be considered an "employee" within the meaning of Chapter 2 of Title 47, and no such person shall be entitled to membership in the Employees' Retirement System of Georgia.

(c) All persons who transfer to the authority pursuant to subsection (a) of this Code section and who, immediately prior to such transfer, are state employees in the unclassified service as defined in Code Section 45-20-2 shall remain in the unclassified service. All such persons who, immediately prior to the transfer, are state employees in the classified service as defined in Code Section 45-20-2 may elect to remain in the classified service; provided, however, that if any such person accepts a promotion or transfer to another position, he or she shall become an employee in the unclassified service as defined by Code Section 45-20-2.

(d) The rights and benefits in the Employees' Retirement System of Georgia and any employee benefits of any employee transferring to the authority pursuant to subsection (a) of this Code section shall not be impaired. (Code 1981, § 20-3-329, enacted by Ga. L. 1996, p. 837, § 5; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-26/HB 642.)

**The 2012 amendment**, effective July 1, 2012, deleted "of the State Personnel Administration" following "service" throughout subsection (c); substituted "state employee, no such" for "state employee or subject to the State Personnel Administration under Chapter 20 of Title 45. No such" in subsection (b); in the second sentence of subsection (c), deleted "and be governed by the relevant provisions of the State Personnel Administration" following "classified service" near the middle, and substituted "as defined by Code Section 45-20-2" for "for purposes of benefits administered pursuant to the State Personnel Administration" near the end.

**Editor's notes.** — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."



**Subpart 2****Educational Loans Financed by Revenue Bonds****20-3-340. Legislative findings; purpose of subpart.**

The General Assembly finds that students and parents are not always able to obtain educational loan assistance from a commercial lender under the Georgia Higher Education Loan Program provided for in Part 2 of this article; that a need exists to make additional educational loan funds available to students and parents; and that a need exists to provide for secondary financing and servicing of educational loans made by other lenders in order to enable such lenders to maintain or expand their participation in the Georgia Higher Education Loan Program. The purpose of the General Assembly, as provided for in this subpart, is to enable the authority to make additional educational loan funds available for students and parents and to make secondary financing and servicing of educational loans available to other commercial lenders. (Code 1933, § 32-3726, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 1981, p. 735, § 35.)

**20-3-341. Definitions.**

As used in this subpart, the term:

(1) "School" means a "school" as such term is defined in paragraph (18) of Code Section 20-3-262.

(2) "Student" or "eligible student" means a "student" or "eligible student" as such term is defined in paragraph (21) of Code Section 20-3-262 and regulations of the authority. (Code 1933, § 32-3727, enacted by Ga. L. 1980, p. 835, § 3.)

**20-3-342. Educational loan program activities authorized; powers and duties of authority.**

(a) The authority is authorized to be a lender in the Georgia Higher Education Loan Program as provided for in Part 2 of this article and to establish and administer educational loan program activities for the benefit of students and parents and other lenders who participate in the Georgia Higher Education Loan Program pursuant to this subpart.

(b) In addition to other provisions of this part, the authority shall have all the powers necessary or convenient to carry out and effectuate its purposes, duties, and functions under this subpart, including, but without limiting the generality of the foregoing, the following powers:

(1) To issue bonds or other obligations for the purpose of carrying out its powers, duties, functions, and purposes set forth in this subpart;

(2) To make or participate in the making of educational loans, to purchase or participate in the purchase of educational loans, and to contract in advance for any such purchase or to purchase and retain rights to make any such purchase and to pay any amounts payable in respect of such rights;

(3) To sell or participate in the sale of educational loans, in conformity with the federal act and Part 2 of this article, any such sale to be public or private and on such terms as the board of directors shall authorize; and to contract in advance for any such sale or to purchase and retain rights to make any such sale and to pay commitment fees or any other amounts payable in respect of such rights;

(4) To service or contract for the servicing of educational loans and to contract in advance for the servicing of educational loans;

(5) To collect and pay reasonable fees and charges in connection with the purchasing, selling, and servicing, or the causing to be purchased, sold, or serviced, of educational loans held by the authority, including payment to any person for the servicing of such educational loans; and to pay reasonable fees, including the assignment of benefits available to the authority, to any agency or instrumentality of the state for administrative services related to the authority's educational loan program;

(6) To procure or maintain loan guaranties in respect of all educational loans held by the authority and to pay any required guaranty fees;

(7) To consent, whenever it deems it necessary or desirable in the fulfillment of its purposes, to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms of any educational loan held by the authority, subject to the provisions of any bonds or other obligations of the authority or the trust indentures or resolutions under which such bonds or other obligations were issued;

(8) To include in any borrowing such amounts as may be deemed necessary by the authority to pay interest, financing charges, or costs of insurance respecting any of its obligations, including consulting, advisory, and legal fees, and such other expenses and to fund any reserve funds as are necessary or incident to any such borrowing;

(9) To make, execute, and effectuate any and all agreements or other documents with any federal or state agency or any person, corporation, association, partnership, or other organization or entity necessary to accomplish its purposes under this subpart;

(10) To invest any funds held in reserves, held in sinking fund accounts, or not required for immediate disbursement in obligations

of or directly or indirectly guaranteed by the United States, the state, or any agency or instrumentality of either or in any obligations of banks or savings and loan associations within the state fully collateralized by a pledge of such obligations; and, notwithstanding Code Section 36-82-7 to the contrary, to invest such funds in other obligations of investment quality and having a recognized national market, but only to the extent expressly permitted by bond resolutions, trust indentures, or other agreements with holders of bonds or other obligations issued by the authority;

(11) To employ fiscal consultants, attorneys, counselors, and such other consultants and employees as may be required in its judgment for the purposes of this subpart; and to fix and pay their compensation; and

(12) To prescribe rules, regulations, policies, and procedures as may be necessary or convenient to carry out and effectuate the purposes, duties, and functions of the authority under this subpart. (Ga. L. 1969, p. 683, §§ 7, 16; Code 1933, § 32-3728, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 1981, p. 735, § 36.)

#### JUDICIAL DECISIONS

**Loan default resulting from collegiate discontinuation no defense.** — It is not a valid defense to an action to recover on teacher scholarship loan notes that the defendant recipient's default in the terms of the loan agreement, by discontinuing a course or program of study for which the student was receiving scholarship aid, resulted from the student's involuntary discontinuation by the authorities of the college at which the student was enrolled. *Swindell v. Georgia*

State Dep't of Educ., 138 Ga. App. 57, 225 S.E.2d 503 (1976).

**In action to recover on loan notes, maker's minority not valid defense.** — In an action to recover on teacher scholarship loan notes, executed by the defendant recipient of the loans as maker and by the defendant mother as comaker, the defense of the minority of the maker at the time of executing the notes was not valid. *Swindell v. Georgia State Dep't of Educ.*, 138 Ga. App. 57, 225 S.E.2d 503 (1976).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 42 Am. Jur. 2d, Infants, § 47.

**C.J.S.** — 81A C.J.S., States, § 142.

#### **20-3-343. Credit of state not pledged for payment of authority obligations; revenues and assets available for payment.**

Bonds and other obligations issued under this subpart shall not be deemed to constitute a debt, liability, or obligation of the state or a pledge of the faith and credit of the state or any political subdivision thereof, including the authority, but shall be payable solely from the revenues or assets of the authority which may be pledged for such



payment and from the proceeds of any refunding bonds. Such revenues and assets may include the proceeds of the bonds, revenues derived by the authority from or in respect of educational loans made or purchased from the proceeds of the bonds, including proceeds from the sale of such educational loans and including any loan guaranty proceeds received in respect thereof, and investment earnings of the authority and other revenues received by the authority in connection with its program of financing, holding, or selling educational loans pursuant to this subpart. Such revenues and assets may also include, to the extent specified in the resolution authorizing issuance of such bonds or other obligations or the trust indentures securing them and in accordance with all other resolutions, indentures, or contracts of the authority and in accordance with law, educational loans financed and held by the authority with funds made available to it pursuant to Subpart 3 of this part and revenues derived therefrom. Each obligation of the authority issued under this subpart shall contain on its face a statement to the effect that the authority shall not be obligated to pay the obligation nor the interest thereon except from the revenues or assets pledged therefor and that neither the faith and credit nor the taxing power of the state or any political subdivision thereof is pledged to the payment of the principal of or the interest on such obligation. (Ga. L. 1969, p. 683, § 28; Code 1933, § 32-3729, enacted by Ga. L. 1980, p. 835, § 3.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 367, 374, 386 et seq.      **C.J.S.** — 81A C.J.S., States, §§ 209, 210, 225, 228.

#### **20-3-344. Issuance of bonds and notes of authority; amount; interest; form; execution; use of proceeds; validation.**

(a) The authority is authorized to provide for the issuance of bonds of the authority not to exceed \$300 million aggregate principal amount outstanding at any one time excluding bonds issued to refund outstanding bonds of the authority to carry out and effectuate its purposes and powers under this subpart. In anticipation of the issuance of such bonds, the authority also is authorized to provide for the issuance of notes. Such bonds or notes may be issued at one time or from time to time, provided the aggregate principal amount of such bonds and notes outstanding at any one time shall not exceed the amount authorized by this subsection, excluding bonds or notes issued to refund outstanding bonds or notes of the authority. The principal of, premium, if any, and the interest on such bonds or notes shall be payable solely from the funds provided for in this subpart for such payment. Any such notes may be made payable from the proceeds of bonds or renewal notes, or in the event bond or renewal note proceeds are not available, such notes

may be paid from revenues or assets available to the authority for this purpose under this subpart in accordance with resolutions or other agreements with holders of any outstanding bonds or other obligations of the authority. The bonds or notes of each issue shall be dated, shall bear interest at such rates, may be redeemable before maturity at the option of the authority at such price or prices as may be determined by the authority, and shall be under such other terms and conditions as may be determined by the authority. Notes shall mature at such time or times, not exceeding five years from their date or dates, and bonds shall mature at such time or times, not exceeding 40 years from their date or dates, as may be determined by the authority. The authority shall determine the form of such bonds or notes, including coupon form, registered form, registration as to principal only, or all of the foregoing forms, and shall determine the right of reconversion or interchange into other forms. The authority shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or outside the state. All such bonds shall be executed in the name of the authority by the chairperson and the secretary of authority and shall be sealed with the official seal of the authority or a facsimile thereof. Coupons shall be executed in the name of the authority by the chairperson of the authority. The facsimile signature of either the chairperson or the secretary of the authority may be imprinted in lieu of the manual signature if the authority so directs and the facsimile of the chairperson's signature shall be used on coupons. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or notes or coupons attached thereto shall cease to be such officer before the delivery thereof, his or her signature or facsimile signature shall nevertheless be valid and sufficient for all purposes as if he or she had remained in office until such delivery. The authority may also provide for the authentication of the bonds or notes by a trustee or fiscal agent. Prior to the preparation of definitive bonds, the board of directors may issue interim receipts, interim certificates, or temporary bonds exchangeable for definitive bonds upon the issuance of the latter. The authority may also provide for the replacement of any bond which shall become mutilated or be destroyed or lost. Such revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things which are specified or required by this part. Upon the approval of a resolution of the authority authorizing the sale of its bonds or notes, such bonds or notes may be sold in such manner, either at public or private sale, and for such price as the authority shall determine to be in the best interests of the authority and to effectuate best its purposes under this subpart.

(b) The proceeds of any bonds or notes issued by the authority shall be used solely for the purpose for which issued and shall be disbursed

in such manner and under such restrictions, if any, as the authority may provide in a resolution authorizing the issuance of such bonds or notes or in a trust agreement securing such bonds or notes. No such bond proceeds may be expended for the making or the purchase of any loan unless such loan is an educational loan as defined in paragraph (13) of Code Section 20-3-312.

(c) All revenue bonds issued by the authority under this part shall be executed, confirmed, and validated under and in accordance with Article 3 of Chapter 82 of Title 36, except as otherwise provided in this part. The venue for all bond validation proceedings pursuant to this part shall be Fulton County, and the Superior Court of Fulton County shall have exclusive trial court jurisdiction over such proceedings. Bonds issued shall have a certificate of validation bearing the facsimile signature of the clerk of the Superior Court of Fulton County, stating the date on which such bonds were validated; and such entry shall be original evidence of the fact of judgment and shall be received as original evidence in any court in this state. The authority shall reimburse the district attorney for his actual costs associated with the bond validation proceedings, if any. The fees payable to the clerk of the Superior Court of Fulton County for validation and confirmation shall be as follows for each bond, regardless of the denomination of such bond: \$1.00 each for the first 100 bonds; 25¢ for each of the next 400 bonds; and 10¢ for each such bond over 500. (Ga. L. 1969, p. 683, §§ 16-20, 23; Code 1933, § 32-3730, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 1981, p. 735, § 37; Ga. L. 2003, p. 158, § 7; Ga. L. 2005, p. 1134, § 3/HB 298.)

**Cross references.** — Revenue bonds generally, § 36-82-60 et seq.

### **20-3-345. Trust agreements authorized; provisions of trust agreements and bond resolutions.**

In the discretion of the authority, any obligation issued under this subpart may be secured by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside the state. Such trust agreement or the resolution providing for the issuance of such obligations may pledge or assign all or any part of the revenues or assets of the authority derived or held by the authority under and pursuant to this subpart, including, without limitation, as they relate to this subpart: educational loans; educational loan commitments; temporary loans; contracts; agreements; other security or investment obligations, fees, or charges made or received; moneys received for the sale of or in payment of educational loans and interest thereon, including the proceeds of guaranties thereon; and any other moneys that may be



received, held, or due to be received by the authority from the United States, the corporation, or any other person as a result of the activities and operations of the authority under this subpart. The educational loans which are, or the revenues from which are, included within any such pledge may include, at the discretion of the authority and to the extent specified in such resolution or trust indenture and in accordance with all other resolutions, indentures, contracts of the authority and in accordance with law, educational loans financed by the authority with funds available to it pursuant to Subpart 3 of this part. Such trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the holders of any such obligations as may be reasonable, proper, and not in violation of law, including covenants setting forth the duties of the authority in relation to the purposes to which obligation proceeds may be applied; the disposition or pledging of revenues or assets of the authority under this subpart; the terms and conditions for the issuance of additional obligations; and the custody, safeguarding, and application of moneys and assets of the authority under this subpart. It shall be lawful for any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of obligations, revenues, or other moneys under this subpart to furnish such indemnifying bonds or to pledge such securities as may be required by the authority. Any such trust agreement or resolution may set forth the rights and remedies of the holders of the obligations to which it relates and the rights and remedies of the trustee, if any, and may restrict the individual right of action by any such holders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the authority may deem reasonable and proper for the security of the holders of any obligations. All expenses incurred in carrying out such trust agreement or resolution may be paid from the revenues or assets pledged or assigned to the payment of the principal of and the interest on obligations or from any other funds available to the authority for this purpose. (Ga. L. 1969, p. 683, § 29; Code 1933, § 32-3731, enacted by Ga. L. 1980, p. 835, § 3.)

RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 178.      **C.J.S.** — 81A C.J.S., States, § 262.

**20-3-346. Lien of pledge of revenues or assets of authority.**

The pledge of any revenues or assets of the authority to the payment of the principal of or the interest on any obligations of the authority shall be valid and binding from the time when the pledge is made; and any such assets or revenues shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act. The

lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether such parties have notice of such pledge. Nothing in this Code section shall be construed to prohibit the authority from selling any assets subject to any pledge, except to the extent that any such sale may be restricted by a trust agreement or resolution providing for the issuance of obligations of the authority. (Code 1933, § 32-3732, enacted by Ga. L. 1980, p. 835, § 3.)

### **20-3-347. Moneys received by authority deemed trust funds; investment.**

Notwithstanding any other law to the contrary, all moneys received by the authority pursuant to this subpart shall be deemed to be trust funds to be held and applied solely as provided in this subpart. The resolution authorizing any obligations or the trust agreement securing such obligations may provide that any of such moneys may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply them for the purposes of this subpart, subject to this subpart and to such resolution or trust agreement. Any such moneys or any other moneys of the authority derived from its operations and functions under this subpart may be invested as provided in paragraph (10) of subsection (b) of Code Section 20-3-342. (Ga. L. 1969, p. 683, §§ 30, 34; Code 1933, § 32-3733, enacted by Ga. L. 1980, p. 835, § 3.)

### **RESEARCH REFERENCES**

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Funds, §§ 2, 5 et seq., 33 et seq. 63C Am. Jur. 2d, Public Officers and Employees, §§ 263, 346.

**C.J.S.** — 81A C.J.S., States, §§ 224, 225, 228.

### **20-3-348. Rights of holders of obligations of authority.**

Any holder of obligations issued by the authority under this subpart or of any coupons appertaining thereto and any trustee under any resolution authorizing the issuance of such obligations or trust indenture securing such obligations, except to the extent the rights given in this Code section may be restricted by such resolution or trust indenture, may, by action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the state, including those granted under this Code section, under such resolution or trust indenture, or under any other contract executed by the authority pursuant to this subpart and may enforce and compel the performance of all duties required by this subpart or by such resolution or trust indenture to be

performed by the authority or by any officer thereof. (Ga. L. 1969, p. 683, § 37; Code 1933, § 32-3734, enacted by Ga. L. 1980, p. 835, § 3.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 250, 251.      **C.J.S.** — 81A C.J.S., States, § 262.

#### **20-3-349. Obligations of authority are negotiable instruments.**

Notwithstanding Code Sections 20-3-340 through 20-3-348 or any recitals in any obligations issued by the authority under this subpart, all such obligations and interest coupons appertaining thereto shall be and are made negotiable instruments under the laws of the state, subject only to any applicable provisions for registration. (Ga. L. 1969, p. 683, § 24; Code 1933, § 32-3735, enacted by Ga. L. 1980, p. 835, § 3.)

**Cross references.** — Investment securities, T. 11, A. 8.

#### **20-3-350. Obligations of authority are legal investments and deposits.**

Obligations issued by the authority under this subpart are made securities in which all public officers and public bodies of the state and its political subdivisions and all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such obligations are made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds, notes, or obligations of the state is now or may hereafter be authorized by law and may constitute proper and legal collateral for any deposit made by any such officer, agency, or subdivision for which collateral must be pledged according to law. (Ga. L. 1969, p. 683, § 26; Code 1933, § 32-3736, enacted by Ga. L. 1980, p. 835, § 3.)

#### **20-3-351. Issuance of refunding obligations by authority.**

(a) The authority is authorized to provide for the issuance of refunding obligations for the purpose of refunding any obligations then outstanding which shall have been issued under this subpart, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations and, if deemed advisable by the authority, for any corporate purpose of the authority provided for in this subpart, except to the extent that the



issuance of any such refunding obligations is limited or made subject to conditions under any resolution, trust indenture, or other agreement with holders of outstanding obligations of the authority. The issuance of such obligations, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties, and obligations of the authority in respect thereof shall be governed by the provisions of this subpart which relate to the issuance of obligations, insofar as such provisions may be appropriate.

(b) Such refunding obligations may be sold or exchanged for outstanding obligations issued under this subpart; and, if sold, their proceeds may be applied, in addition to any other authorized purposes, to the purchase, redemption, or payment of such outstanding obligations. Pending the application of the proceeds of any such refunding obligations together with any other available funds to the payment of:

(1) The principal, accrued interest, and any redemption premium on the obligations being refunded;

(2) Any interest on such refunding obligations, if so provided or permitted in the resolution authorizing the issuance of such refunding obligations or in the trust indenture securing them; and

(3) Any expenses in connection with such refunding;

such proceeds may be invested in direct obligations of, or obligations the principal of which and the interest on which are unconditionally guaranteed by, the United States which shall mature or which shall be subject to redemption by their holders at the option of such holders, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended. (Ga. L. 1969, p. 683, § 22; Code 1933, § 32-3737, enacted by Ga. L. 1980, p. 835, § 3.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1991, a comma was added to precede "the United States" near the end of subsection (b).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, § 236 et seq.

**C.J.S.** — 81A C.J.S., States, § 259.

**ALR.** — Power of municipal corporation to refund special assessment bonds, 102 ALR 202.

Power of municipality or other governmental body to issue refunding bonds to

retire obligation in respect of which the creation and maintenance of a sinking fund by taxation is required by constitutional or statutory provision, 157 ALR 794.

Power of governmental unit to issue bonds as implying power to refund them, 1 ALR2d 134.

**20-3-352. Reserve or replacement funds of authority.**

The authority shall be authorized, in connection with the issuance of its bonds or other obligations pursuant to this subpart, to establish, in respect of such bonds or obligations, such reserve funds or replacement funds as may be required in the sound discretion of its board of directors to enable the authority to effectuate its proper public purposes, to fund such reserve funds or replacement funds with bond proceeds, and to invest such reserve funds or replacement funds in accordance with paragraph (10) of subsection (b) of Code Section 20-3-342. (Ga. L. 1969, p. 683, § 33; Code 1933, § 32-3738, enacted by Ga. L. 1980, p. 835, § 3.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 5, 386.      **C.J.S.** — 81A C.J.S., States, §§ 224, 228, 260.

**20-3-353. Exemption of directors and officers of authority from personal liability.**

No director or officer of the authority shall be subject to any personal liability or accountability by reason of his execution of any obligations or the issuance thereof. (Code 1933, § 32-3739, enacted by Ga. L. 1980, p. 835, § 3.)

**20-3-354. Payment of expenses from appropriations and income.**

The authority is authorized to accept and expend such moneys as may be appropriated from time to time by the legislature and income from the operations of the authority under this subpart, subject to any resolution, trust indenture, or other agreement with the holders of any of its outstanding obligations, for the payment of expenses of administration and operations. (Code 1933, § 32-3740, enacted by Ga. L. 1980, p. 835, § 3.)

**20-3-355. Tax exemptions of authority and its bonds and notes; exceptions.**

The authority is a duly created public corporation and political subdivision of the state and is performing essential governmental functions in the exercise of its corporate purposes. Accordingly, the authority shall not be required to pay and shall be exempt and free from the payment of any taxes and assessments to the state or to any county, municipality, or other political subdivision of the state, upon any of its property or upon its obligations or other evidences of indebtedness issued pursuant to this subpart and part, or upon any moneys, funds,

revenues, or other income held or received by it; and the bonds and notes issued by the authority and the income from such bonds or notes shall also at all times be exempt from taxation within the state, except for death and gift taxes and taxes of transfers. Real property owned by the authority shall be exempt from all property taxation and special assessments of the state or political subdivisions of the state, but the authority may agree to pay, in lieu of such taxes, such amounts as it finds consistent with the cost to the state or political subdivision of supplying municipal services to it and maintaining its economic feasibility, which payments such bodies are authorized to accept. The exemption from taxation provided in this Code section shall not, however, extend to nor include any exemption from sales and use taxes on property purchased by or for the use of the authority. (Ga. L. 1969, p. 683, § 27; Code 1933, § 32-3741, enacted by Ga. L. 1980, p. 835, § 3.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 71 Am. Jur. 2d, State and Local Taxation, § 346.      **C.J.S.** — 84 C.J.S., Taxation, § 251.

### 20-3-356. Interests of bondholders protected.

While any of the bonds issued by the authority remain outstanding, the powers, duties, or existence of the authority or of its officers, employees, or agents shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such bonds, nor will the state itself in any way obstruct, prevent, impair, or render impossible the due and faithful performance by the authority of its duties. This part shall be for the benefit of the state, the authority, and each and every holder of the authority's bonds and, upon and after the issuance of bonds under this part, shall constitute an irrevocable contract with the holders of such bonds. (Ga. L. 1969, p. 683, § 39; Code 1933, § 32-3743, enacted by Ga. L. 1980, p. 835, § 3.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 250, 251.      **C.J.S.** — 81A C.J.S., States, § 262.

### 20-3-357. Termination or dissolution of authority.

Upon termination or dissolution of the authority, all assets, rights, and properties of the authority under the authority of this subpart shall pass to and be vested in the state to be used for educational purposes, subject to the rights of lienholders and other creditors under this subpart; provided, however, that no such termination or dissolution shall take effect so long as the authority shall have bonds or notes



outstanding, unless adequate provision has been made for the payment thereof. (Code 1933, § 32-3744, enacted by Ga. L. 1980, p. 835, § 3.)

### **20-3-358. Subpart and part deemed supplemental to other laws.**

This subpart and part shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby, shall be regarded as supplemental and additional to any powers conferred by other laws upon the authority, and shall not be regarded as in derogation of any such powers; provided, however, that the issuance of bonds or notes under this subpart need not comply with the requirements of any other law applicable to the issuance of bonds or notes. (Ga. L. 1969, p. 683, § 42; Code 1933, § 32-3742, enacted by Ga. L. 1980, p. 835, § 3.)

#### **Subpart 3**

#### **Educational Loans Financed by State Funds**

### **20-3-370. Legislative findings; purpose of subpart.**

The General Assembly finds that students and parents are not always able to obtain educational loan assistance from a commercial lender under the Georgia Higher Education Loan Program provided for in Part 2 of this article; that a need exists to make additional educational loan funds available to students and parents; and that shortages exist within the state in the supply of trained personnel in certain paramedical and other professional and educational fields and other areas, which might possibly be alleviated by providing educational loan assistance to students in those fields and areas together with an option whereby such students can repay such educational loans through services rendered in lieu of cash repayment. The purpose of the General Assembly, as provided for in this subpart, is to enable the authority to make additional educational loans to students and parents and to make service cancelable loans to students in certain fields of study and other areas as provided in this subpart. (Code 1933, § 32-3746, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 1981, p. 735, § 38.)

### **20-3-371. Definitions.**

As used in this subpart, the term:

(1) "School" means "school" as such term is defined in paragraph (18) of Code Section 20-3-262 and in regulations of the authority.

(2) "Student" or "eligible student" means a "student" or "eligible student" as such term is defined in paragraph (21) of Code Section

20-3-262 and in regulations of the authority. (Code 1933, § 32-3747, enacted by Ga. L. 1980, p. 835, § 3.)

**20-3-372. State funded educational loan program authorized; powers of authority.**

The authority is authorized to be a lender in the Georgia Higher Education Loan Program, as provided for in Part 2 of this article, and to establish and administer a state direct educational loan program pursuant to this subpart. The authority is authorized to prescribe all rules, regulations, policies, and procedures necessary or convenient for the administration of the program and all terms and conditions applicable to loans made under this subpart; provided, however, that they shall conform with this subpart and with Part 2 of this article in order that such loans shall be guaranteed by the corporation. (Ga. L. 1969, p. 683, § 6; Ga. L. 1971, p. 518, § 2; Code 1933, § 32-3748, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 1981, p. 735, § 39.)

**20-3-373. General loan fund.**

(a) The authority shall maintain a general loan fund to which shall be credited:

(1) State funds appropriated for use by the authority for educational loan purposes as specified in this subpart other than service cancelable loans;

(2) Unrestricted moneys received by gift or otherwise and other moneys available for and determined by the authority to be used for the purposes of this Code section;

(3) Outstanding educational loans held by the authority under this subpart as to which the borrower does not have a right to repay and cancel the loan through services rendered;

(4) Principal collected on all educational loans held by the authority under this subpart, including the principal portion of payments received from the corporation in discharge of its guaranty liability on such loans; and

(5) Such amounts as may be transferred to the fund from the service cancelable loan fund or the administration fund of the authority.

The authority is authorized to use moneys available in the fund to make guaranteed educational loans to eligible students and parents in accordance with its rules and regulations and Part 2 of this article. The authority is further authorized, under such limited circumstances as it may prescribe, to use moneys available in the fund to purchase

guaranteed educational loans made by other lenders under Part 2 of this article and to sell guaranteed educational loans made or owned by the authority to eligible lenders.

(b) The authority may, in its discretion, to the extent that it may specify in a resolution or trust indenture and in accordance with all other resolutions, indentures, and contracts entered into or executed by the authority in accordance with law and pursuant to Subpart 2 of this part, include in any pledge of revenues or assets made under Subpart 2 of this part educational loans, or revenues derived therefrom, which are a part of the general loan fund. (Code 1933, § 32-3749, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 1981, p. 735, § 40; Ga. L. 2008, p. 626, § 1/SB 169.)

**20-3-374. Service cancelable loan fund; authorized types of service cancelable educational loans.**

(a) The authority shall maintain a service cancelable loan fund to which shall be credited:

(1) State funds appropriated for use by the authority for service cancelable loan purposes;

(2) Unrestricted moneys received by gift or otherwise and other moneys available for and determined by the authority to be available for the purposes of the fund; and

(3) Outstanding educational loans held by the authority under this subpart as to which the borrower has a right to repay in cash or cancel the obligation for cash repayment through service in designated fields.

(b) State funds appropriated for service cancelable loans shall be used by the authority to the greatest extent possible for the purposes designated in this subpart in accordance with the following:

**(1) Paramedical and other medical related professional and educational fields of study.**

(A) The authority is authorized to make service cancelable educational loans to residents of Georgia enrolled in paramedical and other medical related professional and educational fields of study, including selected degree programs in gerontology and geriatrics. A student enrolled in a program leading to the degree of doctor of medicine shall not qualify for a loan under this paragraph. The authority shall, from time to time, by regulation designate the subfields of study that qualify for service cancelable loans under this paragraph. In determining the qualified subfields, the authority shall give preference to those subfields in which the State of



Georgia is experiencing a shortage of trained personnel. Loans made under this paragraph need not be limited to students attending a school located within the state. However, any and all loans made under this paragraph shall be conditioned upon the student agreeing that the loan shall be repaid by the student either:

(i) Practicing in the designated qualified field in a geographical area in the State of Georgia approved by the authority. For service repayment, the loan shall be repaid at a rate of one year of service for each academic year of study or its equivalent for which a loan is made to the student under this paragraph; or

(ii) In cash repayment with assessed interest thereon in accordance with the terms and conditions of a promissory note that shall be executed by the student.

(B) The authority is authorized to make service cancelable loans to residents of this state enrolled in a course of study leading to a degree in an educational field that will permit the student to be employed as either a licensed practical nurse or a registered nurse. Service cancelable loans can also be made available under this paragraph for students seeking an advanced degree in the field of nursing. The maximum loan amount that a full-time student may borrow under this paragraph shall not exceed \$10,000.00 per academic year. Any and all loans made under this paragraph shall be conditional upon the student agreeing that the loan shall be repaid by the student either:

(i) Practicing as a licensed practical or registered nurse in a geographical area in the State of Georgia that has been approved by the authority. For service repayment, the loan shall be repaid at a rate of one year of service for each academic year of study or its equivalent for which a loan is made to the student under this paragraph; or

(ii) In cash repayment with assessed interest thereon in accordance with the terms and conditions of a promissory note that shall be executed by the student;

(2) **Georgia National Guard members.** The authority is authorized to make service cancelable educational loans to residents of Georgia who are eligible members of the Georgia National Guard and who are enrolled at the undergraduate level in a private or public college or public postsecondary technical or vocational school located in the state. Members of the Georgia National Guard who are in good standing according to applicable regulations of the National Guard shall be eligible to apply for a loan. Such loans shall be on the terms and conditions set by the authority in consultation with the Depart-

ment of Defense, provided that any such loan shall not exceed an amount equal to the actual tuition charged to the recipient for the period of enrollment in an educational institution or the tuition charged by the University of Georgia for the period of enrollment at the university, whichever is less. Students eligible for the HOPE scholarship or HOPE grant at an eligible public or private postsecondary institution are not eligible to receive this loan during a school term in which they are receiving HOPE scholarship or HOPE grant funds. A loan recipient shall not be eligible to receive loan assistance provided for in this paragraph for more than five academic years of study. Educational loans may be made to full-time and half-time students. Upon the recipient's attainment of a baccalaureate degree from an institution or cessation of status as an active member, whichever occurs first, the loan provided by this paragraph shall be discontinued. The loan provided by this paragraph may be suspended at the discretion of the authority for a recipient's failure to maintain good military standing as an active member or failure to maintain sufficient academic standing and good academic progress and program pursuit. Loans made under this paragraph shall be repayable in cash, with interest thereon, or, upon satisfactory completion of a quarter, semester, year, or other period of study as determined by the authority; graduation; termination of enrollment in school; or termination of this assistance with approval of the authority, shall be canceled in consideration of the student's retaining membership in the Georgia National Guard during the period in which the loan is applicable. The adjutant general of Georgia shall certify eligibility and termination of eligibility of students for educational loans and eligibility for cancellation of educational loans by members of the Georgia National Guard in accordance with regulations of the authority;

(3) Reserved; and

(4) **Critical shortage fields.** The authority is authorized to make service cancelable educational loans to residents of the State of Georgia enrolled in any field of study that the authority, from time to time, designates by regulation as a field in which a critical shortage of trained personnel exists in the State of Georgia. Loans made under this paragraph need not be limited to students attending schools located within the State of Georgia. However, any and all loans made under this paragraph shall be conditional upon the student agreeing that the loan shall be repaid by the student either:

(A) Practicing in the designated field in a geographical area in the State of Georgia approved by the authority. For service repayment, the loan shall be repaid at a rate of one year of service for each academic year of study or its equivalent for which a loan is made to the student under this paragraph; or

(B) In cash repayment with assessed interest thereon in accordance with the terms and conditions of a promissory note that shall be executed by the student.

The authority is authorized to place other conditions and limitations on loans made under this paragraph as it may deem necessary to fill the void that has created the critical shortage in the field.

(c) All students receiving loans under this Code section shall execute, prior to the disbursement of any loan proceeds to or for the benefit of that student, a promissory note containing the terms and conditions of the service repayment and cash repayments. Except as prohibited by federal or other state laws, individuals that fail to fulfill the terms and conditions of cash repayment may, without judicial action, be subject to garnishment of their pay, loss of a professional license, offset of lottery winnings, and offset of a state tax refund in accordance with rules and regulations promulgated by the authority not inconsistent with the provisions of this part.

(d) The total sum of service cancelable loans made by the authority in any fiscal year from state appropriations shall not exceed the amount of funds for such loan purposes specified in annual appropriations Acts. Funds in the service cancelable loan fund account that are not expended by the authority for service cancelable loans during any fiscal year shall become a part of the general loan fund account.

(e) If the corporation, pursuant to Code Section 20-3-273, pays or has paid interest to the authority on a service cancelable loan made under this Code section, and if the borrower repays all or a portion of the loan through services rendered as provided for in this Code section, then the authority shall, in accordance with its regulations and in consideration of the services rendered by the borrower, repay to the corporation on behalf of the borrower all or a portion of the interest paid to the authority by the corporation under Code Section 20-3-273. To the extent that this subsection does not apply to all service cancelable loans made to a borrower pursuant to this Code section, the authority is authorized, for purposes of this subsection, to consider the loans made that are the subject of this subsection as being the earlier loans made to the borrower. (Ga. L. 1964, p. 699, §§ 1, 2; Ga. L. 1965, p. 210, §§ 1, 2; Ga. L. 1966, p. 465, § 1; Ga. L. 1971, p. 520, § 1; Ga. L. 1974, p. 461, § 1; Ga. L. 1977, p. 739, § 1; Code 1933, § 32-3750, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 1981, p. 735, §§ 41, 42; Ga. L. 1986, p. 499, § 1; Ga. L. 1987, p. 378, § 3; Ga. L. 1992, p. 6, § 20; Ga. L. 1992, p. 1058, § 1; Ga. L. 1994, p. 588, § 1; Ga. L. 1998, p. 748, § 2; Ga. L. 2003, p. 158, § 8; Ga. L. 2004, p. 631, § 20; Ga. L. 2005, p. 1134, § 4/HB 298; Ga. L. 2011, p. 333, § 1/HB 60.)



**The 2011 amendment**, effective July 1, 2011, in paragraph (b)(3), substituted “Reserved” for “DOCTORS OF VETERINARY MEDICINE. The authority is authorized to make service cancelable educational loans to residents of Georgia who are enrolled in school in the field of doctor of veterinary medicine, including veterinary surgery, obstetrics, dentistry, and all other specialties of veterinary medicine. Loans may be made to students enrolled in a veterinary college or in a veterinary division of a university or college accredited by the American Veterinary Medical Association who are pursuing a program of study leading to the degree of doctor of veterinary medicine or its equivalent. The authority shall from time to time, by regulation, designate specialties within the veterinary science field that qualify for service cancelable loans under this paragraph. In designating the qualified specialties, the authority shall give preference to those specialties in which there are shortages of persons trained in that specialty in the State of Georgia. Loans made under this paragraph need not be limited to students attending a school located in the State of Georgia. However, any and all loans made under this paragraph shall be conditional upon the student agreeing that the loan shall be repaid by the student either:

“(A) Practicing in the approved qualified field in a geographical area in the State of Georgia approved by the authority. For service repayment, the loan shall be repaid at a rate of one year of service for each academic year of study or its equivalent for which a loan is made to the student under this paragraph; or

“(B) In cash repayment with assessed interest thereon in accordance with the

terms and conditions of a promissory note that shall be executed by the student.

“A geographical area for service repayment through services rendered shall not be approved unless the area is a rural or sparsely populated area of the state or in a community of 10,000 population or less according to the United States decennial census of 2000 or any future such census and experiencing a shortage of licensed veterinarians to meet the needs of owners or producers of farm animals used for or in connection with the production of commercial food products. If the loan is not repaid by services rendered, it must be repaid by the student in cash with interest thereon in accordance with the terms of the promissory note executed by the student”.

**Editor’s notes.** — Ga. L. 1998, p. 748, § 1, not codified by the General Assembly, provides: “The General Assembly finds that a fully-staffed, experienced, and well-organized National Guard is vital to the security and safety of the citizens of the nation and the state. A reduction in the manpower of the National Guard could result in the closing of certain military operations in this state causing severe economic hardship to certain counties and municipalities. It is imperative that the state remain competitive with other states and establish a recruitment and retention program to adequately staff the Georgia National Guard. The General Assembly declares that it is the intent of this Act that the Georgia Student Finance Authority exercise its authority to the fullest extent to facilitate the granting, processing, and renewal of service cancelable loans to eligible members of the Georgia National Guard as authorized in this Act.”

### **20-3-375. Income credited to authority administration fund; transfer of surplus to general loan fund.**

All income earned by the authority on funds held under this subpart, including earnings on educational loan trust fund assets unless otherwise provided for in the terms of such trust fund agreements, shall be credited to the authority administration fund for the uses prescribed in Code Section 20-3-318. The board of directors is authorized, in its discretion, to transfer any surplus moneys in the authority administration fund to the general loan fund account for the uses prescribed in

Code Section 20-3-373. (Code 1933, § 32-3753, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 1981, p. 735, § 43.)

### Subpart 3A

#### Public Interest Lawyers' Fund

#### **20-3-380. Legislative findings; purpose of subpart.**

The General Assembly finds that many attorneys graduate from law school with substantial education debt; that the debt that saddles law school graduates prohibits many from considering public interest work; that Georgia law firms, on average, pay first year associates more than twice the entry level salary for public interest work; that a need exists for public interest entities to hire competent attorneys; that the public is better served by competent and qualified attorneys working in the area of public interest; and that programs providing for education loan forgiveness to encourage law students and other attorneys to seek employment in the area of public interest would better enable public interest entities to attract and retain experienced and qualified attorneys. (Code 1981, § 20-3-380, enacted by Ga. L. 2002, p. 1115, § 1.)

**Law reviews.** — For note on the 2002 enactment of this Code section, see 19 Ga. St. U. L. Rev. 158 (2002).

#### **20-3-381. Definitions.**

As used in this subpart, the term:

(1) "Assistant district attorney" means an attorney employed full time as an assistant district attorney.

(2) "Assistant solicitor-general" or "assistant solicitor" means an attorney employed full time as an assistant solicitor-general, assistant city solicitor, or assistant municipal court solicitor.

(3) "Civil legal aid attorney" means an attorney employed full time as an attorney in a tax-exempt legal aid nonprofit corporation dedicated to providing free or reduced cost legal services to low-income clients in civil cases.

(4) "Civil legal aid organization" means a tax-exempt legal aid nonprofit corporation dedicated to providing free or reduced cost legal services to low-income clients in civil cases.

(5) "Education loan" means any obligation of an attorney to repay a debt created by the advances of money to the attorney by an institutional or governmental lender that financed, in whole or in part, the debt incurred by the attorney to obtain the undergraduate

degree necessary to enter law school, the debt incurred to obtain a Juris Doctor degree or the equivalent, or both.

(6) “Fund” means the Public Interest Lawyers’ Fund created by Code Section 20-3-383.

(7) “Maximum amount authorized” means \$600.00 per month or an amount authorized by subsection (b) or (c) of Code Section 20-3-387.

(8) “Office of Legislative Counsel attorney” means an attorney employed full time by the Office of Legislative Counsel.

(9) “Public defender” means an attorney employed full time in a city, county, state, or university affiliated public defender office or a criminal defense organization dedicated exclusively to providing indigent defense services as a tax-exempt nonprofit corporation.

(10) “Public defender organization” means a city, county, state, or university affiliated public defender office or a criminal defense organization dedicated exclusively to providing indigent defense services as a tax-exempt nonprofit corporation.

(11) “State Law Department attorney” means an attorney employed full time by the State Law Department. (Code 1981, § 20-3-381, enacted by Ga. L. 2002, p. 1115, § 1.)

### **20-3-382. Establishing and administration of loan forgiveness programs.**

The authority is authorized to establish and administer loan forgiveness programs for education loans to encourage law students and other attorneys to choose careers in the area of public interest. The authority is authorized to prescribe all rules, regulations, policies, and procedures necessary or convenient for the administration of these programs and all terms and conditions applicable to payments made under this subpart. (Code 1981, § 20-3-382, enacted by Ga. L. 2002, p. 1115, § 1.)

### **20-3-383. Creation of Public Interest Lawyers’ Fund.**

(a) There is created the Public Interest Lawyers’ Fund.

(b) The authority shall maintain the fund to which shall be credited:

(1) State funds appropriated for use by the authority for education loan forgiveness purposes; and

(2) Unrestricted moneys received by gift or otherwise and other moneys available for and determined by the authority to be used for the purposes of this subpart.



The authority is authorized to use moneys available in the fund to make payments to assist in repaying education loans for eligible attorneys in accordance with its rules and regulations.

(c) Any private donations made by gift or otherwise to the fund may not be designated as to the specific program for which they will be used. (Code 1981, § 20-3-383, enacted by Ga. L. 2002, p. 1115, § 1.)

**20-3-384. Corporation established; contracts with civil legal aid organizations.**

(a) The authority is authorized to establish a corporation to administer the fund. Any subsidiary corporation created pursuant to this subsection shall be created pursuant to Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code," and the Secretary of State shall be authorized to accept any such filing. Upon dissolution of any subsidiary corporation of the authority created pursuant to this subsection, any assets shall revert to the authority or to any successor to the authority or, failing such succession, to the State of Georgia. The authority shall not be liable for the debts or obligations or bonds of any subsidiary corporation or for the actions or omissions to act of any subsidiary corporation unless the authority expressly so consents.

(b) Any corporation established pursuant to subsection (a) of this Code section, through the authority, is authorized to enter into contracts with civil legal aid organizations or the employees of such organizations and public defender organizations or the employees of such organizations for the purpose of providing education loan forgiveness in consideration of such organizations' contributions and commitment to providing legal services to low-income civil clients or indigent criminal defendants of this state.

(c) In order for attorneys employed by civil legal aid organizations and public defender organizations to participate, such organizations must contract with the authority and promise to provide the civil legal aid services or public defender services for the period of time for which an assisted employee is obligated or some other period determined by the authority. (Code 1981, § 20-3-384, enacted by Ga. L. 2002, p. 1115, § 1.)

**20-3-385. Utilization of fund in repayment of education loans; funding of four separate programs.**

(a) The fund shall be used by the authority to assist in the repayment of any education loan owed by an individual who is:

(1) An assistant district attorney, an assistant solicitor-general, or an assistant solicitor;

(2) A civil legal aid attorney;

(3) A public defender; or

(4) An Office of Legislative Counsel attorney or a State Law Department attorney.

(b) The authority shall establish four separate programs to assist each of the four categories of recipients identified in subsection (a) of this Code section and shall account separately for the funding of each program. Any state appropriation of funds shall separately identify the amount of funds appropriated for each program. Private donations and any other funds available for such programs shall be allocated among such programs by the authority. (Code 1981, § 20-3-385, enacted by Ga. L. 2002, p. 1115, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2002, “among” was substituted for “between” in the last sentence of subsection (b).

**20-3-386. Distribution of education loan repayment assistance; conditions.**

(a) Beginning the seventh month that an attorney is employed in one of the positions listed in Code Section 20-3-385, the authority may distribute education loan repayment assistance for the attorney in an amount not to exceed \$600.00 per month or the attorney’s monthly debt service at the time the initial payments on the loan commenced, whichever is smaller except as otherwise provided in Code Section 20-3-387. The attorney may also elect to receive an amount less than the maximum amount authorized and less than the attorney’s monthly debt service.

(b) As a condition of receipt of the loan forgiveness provided for in subsection (a) of this Code section, the attorney shall enter into a contract with the authority providing that the attorney will remain employed in one of the capacities specified in subsection (a) of Code Section 20-3-385 for one month after receipt of the attorney’s last monthly installment of such assistance for each month for which such assistance was received up to a maximum of 18 months. If the attorney receives the maximum amount authorized, the attorney shall remain employed in such capacity for 18 months after receipt of the last monthly installment. If the attorney receives a lesser amount of education loan repayment assistance than the maximum amount authorized, the employment commitment shall be decreased proportionately, as determined by the authority; provided, however, that the authority may release the attorney from such obligation if it is demonstrated to the satisfaction of the authority that such attorney is unable to obtain employment in said specified capacities.

(c) In the event that the attorney breaches the conditions of the contract with the authority, all moneys distributed by the authority under the contract during the 18 months immediately preceding the month in which the breach occurs shall at once become due and payable to the authority in cash with interest at a rate to be set by the authority.

(d) The authority shall attempt to operate in such a manner as to qualify for the tax benefits provided in 26 U.S.C.A. Section 108.

(e) Nothing in this subpart shall preclude the obligations of the attorney to repay his or her student loan by cash or by service. (Code 1981, § 20-3-386, enacted by Ga. L. 2002, p. 1115, § 1; Ga. L. 2003, p. 140, § 20.)

**U.S. Code.** — The Income from Discharge of Indebtedness is codified at 26 U.S.C. § 108.

### **20-3-387. Eligibility for education loan forgiveness; availability of funds.**

(a) No entitlement to funds is created by this subpart. Eligibility for education loan forgiveness shall be dependent on funding through appropriations, as well as all other conditions of eligibility, as determined by the authority.

(b) In the event funds available to the authority for any of the programs listed in Code Section 20-3-385 are not sufficient for the full education loan forgiveness prescribed by the General Assembly, education loan forgiveness payable on behalf of the individuals in that program shall be reduced by the authority on a pro rata basis.

(c) In the event sufficient funds are available to the authority, the authority is authorized to increase the amount of the education loan forgiveness available to individuals in the programs listed in Code Section 20-3-385. (Code 1981, § 20-3-387, enacted by Ga. L. 2002, p. 1115, § 1.)

**Law reviews.** — For article, “Law Promote Public Interest Practice,” see 10 School Debt Can Limit Options: Loan Repayment Assistance Is a Valuable Tool to Ga. St. B.J. 38 (2005).

## **Subpart 4**

### **Student Incentive Grants**

### **20-3-390. Legislative findings; purpose of subpart.**

The General Assembly finds that a substantial number of qualified Georgia students are not financially able to meet the costs of obtaining



a postsecondary education due to a lack of family resources; that it would not be sound public policy to expect such students to borrow the total amount of funds needed to meet such costs and to incur thereby such substantial indebtedness; and that the United States provides matching funds to states which provide grant assistance to such students on the basis of financial need. The purpose of the General Assembly, as provided for in this subpart, is to enable the authority to participate in the federal program and to provide grant assistance to students who qualify for such assistance on the basis of individual financial need. (Code 1933, § 32-3754, enacted by Ga. L. 1980, p. 835, § 3.)

**20-3-391. State student incentive grant program authorized; eligible students and schools.**

(a) The authority is authorized to establish and administer a program to provide state student incentive grants to students enrolled at the undergraduate level who demonstrate a substantial degree of need for such financial assistance as provided for in the federal Higher Education Act of 1965 (P.L. 89-329), as amended, relative to state student incentive grant programs, including rules and regulations prescribed by the secretary pursuant thereto. The authority is authorized to use such federal funds as may become available to the authority for this purpose and state funds as may be appropriated for use by the authority for this purpose and to prescribe such rules and regulations as may be necessary for administration of the program pursuant to the federal law.

(b) Residents of this state for a period of at least 12 months immediately preceding their date of registration in a branch of the university system; a private college or university which is an approved school for purposes of Subpart 5 of this part, which provides for grants to citizens of Georgia who are students attending colleges or universities in this state which are not branches of the university system; a college or university receiving funds under Article 4 of this chapter; a state supported vocational-technical school; or an accredited or approved nonprofit hospital school of nursing located in this state shall be eligible to apply for a state student incentive grant. The authority is authorized to extend coverage and the benefits of the program to students attending other nonprofit institutions of higher education located in this state which are approved by the United States for purposes of eligibility under the federal and state student incentive grant programs but only to the extent necessary to receive federal funds available for purposes of the program. Until the amount of funds available to the authority for purposes of this program is sufficient to provide assistance to qualifying students at all undergraduate levels,

such assistance shall be limited to full-time students, the maximum student incentive grant that may be awarded to any student shall be approved by the board of directors, subject to appropriations by the General Assembly, and such grant assistance shall not be provided for study during the summer school term. No student shall be eligible to receive a state student incentive grant for a period of more than five academic years. (Ga. L. 1974, p. 1118, §§ 1, 3; Ga. L. 1977, p. 750, § 1; Code 1933, § 32-3755, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 1981, p. 735, § 44; Ga. L. 1982, p. 3, § 20; Ga. L. 1989, p. 879, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1989, a hyphen was deleted in the phrase “state supported” in the first sentence of subsection (b).

**U.S. Code.** — The federal Higher Education Act of 1965, referred to in subsection (a) of this Code section, is codified at 20 U.S.C. § 1001 et seq.

### RESEARCH REFERENCES

**C.J.S.** — 81A C.J.S., States, §§ 28, 142, 210.

#### Subpart 4A

#### Direct Loans to Students on Basis of Need and Merit

### 20-3-395. Definitions.

As used in this subpart, the term:

(1) “Cost of attendance” of a student means the cost of attendance calculated in accordance with Title IV.

(2) “Eligible high school” has the same meaning as provided in Code Section 20-3-519.

(3) “Eligible postsecondary institution” means:

(A) A unit of the University System of Georgia that offers associate or baccalaureate degrees;

(B) A unit of the Technical College System of Georgia that offers associate or baccalaureate degrees; or

(C) An institution of higher education located in this state that offers associate or baccalaureate degrees; that is accredited by a regional accrediting agency recognized by the United States Department of Education; that is not a Bible school or college; that admits as regular students only persons who have a high school diploma, a general educational development diploma, or a degree from an accredited postsecondary institution; and whose students are eligible to participate in the federal Pell Grant program.

(4) “Expected family contribution” means expected family contribution calculated in accordance with Title IV.

(5) “Reasonable interest rate” means an interest rate no higher than the *Wall Street Journal* prime rate effective on July 1 for the fiscal year beginning July 1 of each year. If an outstanding loan made under this subpart is subject to the reasonable interest rate, the reasonable interest rate for the current fiscal year shall apply to such a loan during that fiscal year without regard to the interest rate at the time of the loan’s origination or the interest rate at the time of the student’s default.

(6) “Title IV” means Title IV of the federal Higher Education Act of 1965, as amended, 20 U.S.C.A. Section 1070, et seq. (Code 1981, § 20-3-395, enacted by Ga. L. 2008, p. 626, § 2/SB 169.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2008, “Technical College System of Georgia” was substituted for “Department of Adult and Technical Education” in subparagraph (3)(B).

**Law reviews.** — For article, “Education: Postsecondary Education,” see 28 Ga. St. U. L. Rev. 193 (2011).

### **20-3-395.1. Eligibility; interest rate; repayment; maximum amount.**

(a) The authority is authorized to provide direct loans to students who are legal residents of this state and who are not ineligible under Code Section 20-3-395.4 in accordance with the provisions of this subpart and regulations of the authority promulgated to implement this subpart.

(b) The interest rate for loans provided in accordance with this subpart shall be 1 percent annually except as provided by Code Section 20-3-395.3 in the case of default.

(c) The repayment period for loans provided in accordance with this subpart shall be ten years; provided, however, that, subject to the provisions of Code Section 20-3-395.3, the commission may provide by regulation for deferral of payments and forbearance of payments similar to deferral and forbearance under federal student loan programs.

(d) The maximum amount of a loan under this subpart shall be the lesser of: \$10,000.00 per calendar year; or the cost of attendance of a student minus the expected family assistance and the estimated amount of the student’s loans, grants, and scholarships, including loans, grants, and scholarships provided under Title IV. Except as otherwise provided in this subsection, each applicant for a loan shall be required to apply for other educational assistance, including scholarships, grants, and state funded or Title IV loans, and to provide



information regarding such other applications and the result of such applications as a condition of applying for a loan under this subpart. Loans under this subpart are designed as funding of the last resort for students who have diligently sought scholarships, grants, and state funded or Title IV loans. Applicants are not required to apply for loans under Subpart 4B or Subpart 4C of this part as a condition of eligibility for loans under this subpart.

(e) Eligibility for a loan under this subpart shall be determined annually. A student who has graduated from an eligible high school shall be eligible for a loan for the first year of attendance at an eligible postsecondary institution if the student graduated from an eligible high school before May 1, 2007, with a cumulative grade average of at least a 75 numeric average in his or her core curriculum subjects or if a student graduated from an eligible high school on or after May 1, 2007, with a cumulative grade point average in the student's core curriculum subjects of at least 2.5 on a 4.0 scale. A student's cumulative grade average or grade point average shall be calculated by the methods set out in Code Section 20-2-157. A student who has earned a cumulative grade point average of at least 2.0 at an eligible postsecondary institution shall be eligible for a loan for a second or a subsequent year of attendance at an eligible postsecondary institution.

(f) A student's maximum total eligibility for loans under this subpart shall be limited to \$40,000.00. (Code 1981, § 20-3-395.1, enacted by Ga. L. 2008, p. 626, § 2/SB 169.)

## **20-3-395.2. Separate fund for loans; fees.**

(a) The authority shall establish and maintain a separate fund for loans in accordance with this subpart to which shall be credited:

- (1) State funds appropriated for use for loans under this subpart;
- (2) Moneys received by gift, donation, or otherwise for loans under this subpart;
- (3) Outstanding educational loans held by the authority under this subpart; and
- (4) Principal and interest collected on educational loans held by the authority under this subpart.

(b) Beginning with the first fiscal year following the fiscal year in which the fund has a balance of \$500,000.00 or more, for each fiscal year, the authority shall determine the amount of moneys available for loans under this subpart and shall determine the applicants who are eligible to receive such loans. The authority shall determine which eligible applicants receive loans by a random selection process in which each eligible applicant has an equal chance of being selected for a loan.

(c) The authority shall be entitled to establish a reasonable fee for the processing and collecting of loans made under this subpart. Such fee shall be established by the authority by rule or regulation. (Code 1981, § 20-3-395.2, enacted by Ga. L. 2008, p. 626, § 2/SB 169.)

**20-3-395.3. Repayment schedule; default; service cancelable.**

(a) The authority shall by rule and regulation establish a repayment schedule or schedules for loans made under this subpart. Students shall be required to pay accrued interest annually on the loan or loans while attending a postsecondary institution except in cases of financial hardship. Students shall not be required to begin the repayment of the principal of such loans until the earliest occurrence of one of the following:

(1) The student completes his or her course of study;

(2) The student graduates from an eligible postsecondary institution;

(3) One calendar year after the student's eligibility for a loan under this subpart ends in accordance with subsection (f) of Code Section 20-3-395.1; or

(4) The student has not been enrolled in an eligible postsecondary institution for two academic quarters or two academic semesters.

(b) If the student defaults on the repayment of one or more loans under this subpart, the interest rate for such loan or loans shall be converted to the reasonable interest rate as defined in Code Section 20-3-395.

(c) Notwithstanding anything herein to the contrary, a student may service cancel a loan described in this subpart in accordance with rules and regulations promulgated by the authority if such student is employed by and agrees to teach in a public school in Georgia as a science, technology, engineering, or math teacher at the elementary, middle, or secondary level. For service repayment, the loan shall be repaid at a rate of one year of service for each academic year of study or its equivalent for which a loan is made to a student pursuant to this subpart. (Code 1981, § 20-3-395.3, enacted by Ga. L. 2008, p. 626, § 2/SB 169; Ga. L. 2011, p. 1, § 10/HB 326.)

**The 2011 amendment,** effective March 15, 2011, added subsection (c). See editor's note for applicability.

**Editor's notes.** — Ga. L. 2011, p. 1, § 17/HB 326, not codified by the General Assembly, provides, in part, that the 2011

amendment shall be applicable to postsecondary students beginning in the fall of 2011.

**Law reviews.** — For article, "Education: Postsecondary Education," see 28 Ga. St. U. L. Rev. 193 (2011).

**20-3-395.4. Ineligibility.**

A student is ineligible for any loan described in this subpart if the student:

(1) Is not a United States citizen or a permanent resident alien who meets the definition of an eligible noncitizen under federal Title IV requirements;

(2) Has not complied with United States Selective Service System requirements for registration, if such requirements are applicable to the student;

(3) Is in default on a federal Title IV educational loan or a State of Georgia educational loan, provided that a student who is otherwise eligible and has fully repaid the defaulted loan will be eligible to obtain a loan under this subpart for future academic terms but not retroactively;

(4) Owes a refund on a federal Title IV student financial aid program or a Georgia student financial aid program, provided that a student who is otherwise eligible and has fully paid the refund owed will be eligible to obtain a loan under this subpart for future academic terms but not retroactively;

(5) Has been convicted of a felony offense involving marijuana, a controlled substance, or a dangerous drug as set out in Code Section 20-1-23 or 20-1-24 of the "Drug-free Postsecondary Education Act of 1990," provided that such ineligibility extends from the date of conviction to the completion of the next academic term;

(6) Is incarcerated; or

(7) Does not meet each qualification listed in this subpart and applicable to the student. (Code 1981, § 20-3-395.4, enacted by Ga. L. 2008, p. 626, § 2/SB 169.)

**Subpart 4B****Graduate On Time Student Loans****20-3-400. Short title.**

This subpart shall be known and may be cited as the "Graduate On Time Student Loan Act." (Code 1981, § 20-3-400, enacted by Ga. L. 2008, p. 626, § 3/SB 169.)

**20-3-400.1. Definitions.**

As used in this subpart, the term:



(1) "Beginning date of a postsecondary course of study" means the first day of postsecondary classes attended by a student for credit toward an associate degree or baccalaureate degree. In the case of a program that includes undergraduate studies and is designed for completion within five years, the first day of such classes for credit in such a program is the beginning date of a postsecondary course of study, whether the program leads to a baccalaureate degree or a first professional degree. Advanced placement classes or classes attended under a program of joint or dual enrollment in a high school and a postsecondary institution do not establish the beginning date of a postsecondary course of study.

(2) "Cost of attendance" of a student means the cost of attendance calculated in accordance with Title IV.

(3) "Eligible high school" has the same meaning as set forth in Code Section 20-3-519.

(4) "Eligible postsecondary institution" means:

(A) A unit of the University System of Georgia that offers associate degrees, baccalaureate degrees, or first professional degree programs; or

(B) An institution of higher education located in this state that offers associate degrees, baccalaureate degrees, or first professional degree programs; that is accredited by a regional accrediting agency recognized by the United States Department of Education; that is not a Bible school or college; that admits as regular students only persons who have a high school diploma, a general educational development diploma, or a degree from an accredited postsecondary institution; and whose students are eligible to participate in the federal Pell Grant program.

(5) "First professional degree" means a degree that qualifies a graduate to practice a profession and was earned through a first professional degree program.

(6) "First professional degree program" means a professional degree program that meets the requirements established by the program regulations promulgated by the Georgia Student Finance Commission which, at a minimum, shall include, but not be limited to, the following:

(A) Accepts students after the completion of the sophomore or junior year; and

(B) Results in the award of a first professional degree.

(7) "Graduate On Time Student Loan" or "GOT Student Loan" means a student loan provided in accordance with the provisions of this subpart.

(8) "Reasonable interest rate" means an interest rate no higher than the *Wall Street Journal* prime rate effective on July 1 for the fiscal year beginning July 1 of each year. Except for GOT Student Loans that have been reduced to an interest rate of 1 percent in accordance with subsection (e) of Code Section 20-3-400.2 or an interest rate of 2 percent in accordance with subsection (f) of Code Section 20-3-400.2, the reasonable interest rate for the fiscal year shall apply to all outstanding GOT Student Loans during that fiscal year without regard for the interest rate at the time of a loan's origination or at the time of the student's default.

(9) "Title IV" means Title IV of the federal Higher Education Act of 1965, 20 U.S.C. Section 1070, et seq. (Code 1981, § 20-3-400.1, enacted by Ga. L. 2008, p. 626, § 3/SB 169.)

**20-3-400.2. Eligibility; repayment period; maximum amount; interest rate; requirements.**

(a) The authority is authorized to provide direct loans to students who are legal residents of this state and who are not ineligible under Code Section 20-3-400.6 in accordance with the provisions of this subpart and regulations of the authority promulgated to implement this subpart.

(b) The repayment period for a GOT Student Loan shall be ten years; provided, however, that, subject to the provisions of Code Section 20-3-400.5, the commission may provide by regulation for deferral of payments and forbearance of payments similar to deferral and forbearance under federal student loan programs. The maximum amount of a GOT Student Loan shall be the lesser of \$10,000.00 per calendar year or the cost of attendance for a calendar year minus the estimated amount of the student's loans, grants, and scholarships, including loans, grants, and scholarships provided under Title IV, for the calendar year for which such loan is sought.

(c) A student may apply for a GOT Student Loan annually. A student who is a legal resident of this state and who has graduated from an eligible high school shall be eligible for a GOT Student Loan for the first year of attendance at an eligible postsecondary institution. Any student who is a legal resident of this state attending an eligible postsecondary institution is eligible for a GOT Student Loan for the second and subsequent years of attendance.

(d) Except as otherwise provided by subsection (e) or (f) of this Code section, the interest rate for a GOT Student Loan shall be a reasonable interest rate as defined by paragraph (8) of Code Section 20-3-400.1 and as established by the authority by rule or regulation.

(e) The annual interest rate for any GOT Student Loan shall be converted to 1 percent retroactive to the origination date of the GOT Student Loan for each student who:

(1) Completes his or her course of study with a cumulative grade point average no lower than 2.0 on a 4.0 scale and earns a baccalaureate degree within four years from the beginning date of a course of postsecondary study; or

(2) Completes his or her course of study with a cumulative grade point average no lower than 2.0 on a 4.0 scale and earns a baccalaureate or first professional degree within five years from the beginning date of a course of postsecondary study if the course of postsecondary study:

(A) Was designed to be completed in five years; and

(B) Meets the requirements for a first professional degree program; or

(C) If the course of postsecondary study includes undergraduate studies, leads to a baccalaureate or first professional degree.

(e.1) The annual interest rate for any GOT Student Loan shall be converted to 1 percent retroactive to the origination date of the GOT Student Loan for any student that has met the applicable eligibility requirements to receive a HOPE scholarship under Code Section 20-3-519.2 or a HOPE grant under Code Section 20-3-519.5 as follows:

(1) If attending an eligible public institution, an amount equal to the difference between the HOPE award amount and the then current academic year standard undergraduate tuition amount at the institution to be paid; and

(2) If attending an eligible private institution, an amount equal to the difference between the HOPE award amount and the HOPE tuition payment.

The provisions of this subsection shall be subject to funding.

(f) The annual interest rate for any GOT Student Loan shall be converted to 2 percent retroactive to the origination date of the GOT Student Loan for each student who:

(1) Completes his or her course of study with a cumulative grade point average no lower than 2.0 on a 4.0 scale and earns a baccalaureate degree within five years from the beginning date of a course of postsecondary study; or

(2) Completes his or her course of study with a cumulative grade point average no lower than 2.0 on a 4.0 scale and earns a baccalaureate or first professional degree within six years from the beginning



date of a course of postsecondary study if the course of postsecondary study:

(A) Was designed to be completed in six years; and

(B) Meets the requirements for a first professional degree program; or

(C) If the course of postsecondary study includes undergraduate studies, leads to a baccalaureate or first professional degree.

(g) A student's maximum total eligibility for loans under this subpart shall be limited to \$40,000.00. (Code 1981, § 20-3-400.2, enacted by Ga. L. 2008, p. 626, § 3/SB 169; Ga. L. 2011, p. 1, § 9.1/HB 326.)

**The 2011 amendment,** effective March 15, 2011, added subsection (e.1). See editor's note for applicability.

Assembly, provides, in part, that the 2011 amendment shall be applicable to postsecondary students beginning in the fall of 2011.

**Editor's notes.** — Ga. L. 2011, p. 1, § 17/HB 326, not codified by the General

### 20-3-400.3. Recalculation of interest rate.

(a) When the annual interest rate is converted to 1 percent in accordance with subsection (e) of Code Section 20-3-400.2, the authority shall recalculate the balance owed on the loan to reflect the retroactive change in the interest rate.

(b) The steps of the recalculation required by subsection (a) of this Code section shall include the following:

(1) Calculate the total interest paid by the student on the loan to date;

(2) Calculate the total principal paid by the student on the loan to date;

(3) Calculate the total of fees other than interest paid by the student on the loan to date;

(4) Calculate the current balance owed on the loan by subtracting the principal paid by the student on the loan to date from the original amount borrowed;

(5) Calculate the amount of interest due on the loan from its origination to date at the rate of 1 percent;

(6) Subtract the amount of interest due at 1 percent calculated in paragraph (5) of this subsection from the total interest paid by the student to date calculated in paragraph (1) of this subsection;

(7) Add the difference calculated in paragraph (6) of this subsection to the principal paid by the student to date in paragraph (2) of

this subsection; this sum shall become the new total principal paid by the student on the loan; and

(8) Subtract the new principal paid calculated in paragraph (7) of this subsection from the original amount borrowed by the student in this loan to produce the new balance owed by the student on the loan.

(c) When the annual interest rate is converted to 2 percent in accordance with subsection (f) of Code Section 20-3-400.2, the Student Finance Authority shall recalculate the balance owed on the loan to reflect the retroactive change in the interest rate.

(d) The steps of the recalculation required by subsection (c) of this Code section shall include the following:

(1) Calculate the total interest paid by the student on the loan to date;

(2) Calculate the total principal paid by the student on the loan to date;

(3) Calculate the total of fees other than interest paid by the student on the loan to date;

(4) Calculate the current balance owed on the loan by subtracting the principal paid by the student on the loan to date from the original amount borrowed;

(5) Calculate the amount of interest due on the loan from its origination to date at the rate of 2 percent;

(6) Subtract the amount of interest due at 2 percent calculated in paragraph (5) of this subsection from the total interest paid by the student to date calculated in paragraph (1) of this subsection;

(7) Add the difference calculated in paragraph (6) of this subsection to the principal paid by the student to date in paragraph (2) of this subsection; this sum shall become the new total principal paid by the student on the loan; and

(8) Subtract the new principal paid calculated in paragraph (7) of this subsection from the original amount borrowed by the student in this loan to produce the new balance owed by the student on the loan. (Code 1981, § 20-3-400.3, enacted by Ga. L. 2008, p. 626, § 3/SB 169.)

#### **20-3-400.4. Separate fund for loans; fees.**

(a) The authority shall establish and maintain a separate fund for loans in accordance with this subpart to which shall be credited:

(1) State funds appropriated for use for GOT Student Loans;

(2) Moneys received by gift, donation, or otherwise for GOT Student Loans;

(3) Outstanding GOT Student Loans held by the authority; and

(4) Principal and interest collected on GOT Student Loans held by the authority.

(b) Beginning with the first fiscal year following the fiscal year in which the fund has a balance of \$500,000.00 or more, for each fiscal year, the authority shall determine the amount of moneys available for loans under this subpart and shall determine which eligible applicants receive loans by a random selection process in which each eligible applicant has an equal chance of being selected for a loan.

(c) The authority shall be entitled to establish a reasonable fee for the processing and collecting of GOT Student Loans. Such fees shall be established by the authority by rule or regulation. (Code 1981, § 20-3-400.4, enacted by Ga. L. 2008, p. 626, § 3/SB 169.)

#### **20-3-400.5. Repayment schedule; default.**

(a) The authority shall by rule and regulation establish a repayment schedule or schedules for GOT Student Loans. Students shall be required to pay accrued interest annually while attending a postsecondary institution except in cases of financial hardship. Students shall not be required to begin the repayment of the principal of such loans until the earliest occurrence of one of the following:

(1) The student completes his or her course of study;

(2) The student graduates from an eligible postsecondary institution;

(3) One calendar year after the student's eligibility for a loan under this subpart ends in accordance with subsection (g) of Code Section 20-3-400.2; or

(4) The student has not been enrolled in an eligible postsecondary institution for two academic quarters or two academic semesters.

(b) If the student defaults on the repayment of one or more GOT loans, the interest rate for such loan or loans shall be converted to the reasonable interest rate as defined in Code Section 20-3-400.1. (Code 1981, § 20-3-400.5, enacted by Ga. L. 2008, p. 626, § 3/SB 169.)

#### **20-3-400.6. Ineligibility.**

A student is ineligible for any loan described in this subpart if the student:



(1) Is not a United States citizen or a permanent resident alien who meets the definition of an eligible noncitizen under federal Title IV requirements;

(2) Has not complied with United States Selective Service System requirements for registration, if such requirements are applicable to the student;

(3) Is in default on a federal Title IV educational loan or a State of Georgia educational loan, provided that a student who is otherwise eligible and has fully repaid the defaulted loan will be eligible to obtain a loan under this subpart for future academic terms but not retroactively;

(4) Owes a refund on a federal Title IV student financial aid program or a Georgia student financial aid program, provided that a student who is otherwise eligible and has fully paid the refund owed will be eligible to obtain a loan under this subpart for future academic terms but not retroactively;

(5) Has been convicted of a felony offense involving marijuana, a controlled substance, or a dangerous drug as set out in Code Section 20-1-23 or 20-1-24 of the “Drug-free Postsecondary Education Act of 1990,” provided that such ineligibility extends from the date of conviction to the completion of the next academic term;

(6) Is incarcerated; or

(7) Does not meet each qualification listed in this subpart and applicable to the student. (Code 1981, § 20-3-400.6, enacted by Ga. L. 2008, p. 626, § 3/SB 169.)

#### Subpart 4C

#### Education for Public Service Student Loan

### **20-3-405. Short title.**

This subpart shall be known and may be cited as the “Education for Public Service Student Loan Act.” (Code 1981, § 20-3-405, enacted by Ga. L. 2008, p. 626, § 4/SB 169.)

### **20-3-405.1. Definitions.**

As used in this subpart, the term:

(1) “Cost of attendance” of a student means the cost of attendance calculated in accordance with Title IV.

(2) “Education for Public Service Student Loan” or “EPS Student Loan” means a student loan provided in accordance with the provisions of this subpart.

(3) "Eligible high school" has the same meaning as set forth in Code Section 20-3-519.

(4) "Eligible postsecondary institution" means:

(A) A unit of the University System of Georgia that offers associate degrees, baccalaureate degrees, or graduate degrees; or

(B) An institution of higher education located in this state that offers associate degrees, baccalaureate degrees, or graduate degrees; that is accredited by a regional accrediting agency recognized by the United States Department of Education; that is not a Bible school or college; that admits as regular students only persons who have a high school diploma, a general educational development diploma, or a degree from an accredited postsecondary institution; and whose students are eligible to participate in the federal Pell Grant program.

(5) "Employee" means an individual who receives an Internal Revenue Service Form W-2 from the employer and who is an employee as defined in Code Section 34-9-1 for purposes of workers' compensation.

(6) "First degree" means the first baccalaureate degree or the first graduate degree completed by a student with the assistance of an EPS Student Loan.

(7) "Graduate degree" means a degree earned after a student has earned a baccalaureate degree, including, but not limited to, a master's degree, a juris doctor degree, or a medical doctor degree.

(8) "Public service" means service as an employee of any of the following: the State of Georgia; an agency or instrumentality of this state; the executive, legislative, or judicial branch of government of this state; a political subdivision of this state; the University System of Georgia or any unit of the university system; an authority or public corporation of this state; a local board of education of this state; or an agency or instrumentality of a political subdivision of this state.

(9) "Reasonable interest rate" means an interest rate no higher than the *Wall Street Journal* prime rate effective on July 1 for the fiscal year beginning July 1 of each year. The reasonable interest rate for the fiscal year shall apply to all outstanding EPS Student Loans during that fiscal year without regard for the interest rate at the time of a loan's origination or at the time of the student's default, except for EPS Student Loans that:

(A) Have been converted to 1 percent interest loans in accordance with subsection (a) of Code Section 20-3-405.3; and

(B) Have been converted to interest-free loans in accordance with subsection (b) of Code Section 20-3-405.3.

(10) "Second degree" means the second degree completed by a student with the assistance of an EPS Student Loan.

(11) "Title IV" means Title IV of the federal Higher Education Act of 1965, 20 U.S.C. Section 1070, et seq.

(12) "Undergraduate degree" means a baccalaureate degree. (Code 1981, § 20-3-405.1, enacted by Ga. L. 2008, p. 626, § 4/SB 169.)

**20-3-405.2. Eligibility; repayment period; maximum amount; application; statement of requirements.**

(a) The authority is authorized to provide direct loans to students who are legal residents of this state and who are not ineligible under Code Section 20-3-405.7 in accordance with the provisions of this subpart and regulations of the authority promulgated to implement this subpart.

(b) The repayment period for an EPS Student Loan shall be ten years; provided, however, that, subject to the provisions of Code Section 20-3-405.6, the commission may provide by regulation for deferral of payments and forbearance of payments similar to deferral and forbearance under federal student loan programs. The maximum amount of an EPS Student Loan shall be the lesser of \$10,000.00 or the cost of attendance for a calendar year minus the estimated amount of the student's loans, grants, and scholarships, including loans, grants, and scholarships provided under Title IV, for the calendar year for which such loan is sought. The maximum amount of EPS Student Loans for a degree shall be \$10,000.00 times the number of academic years required for a full-time student to earn the degree.

(c) A student may apply for an EPS Student Loan annually. A student who is a legal resident of this state and who has graduated from an eligible high school shall be eligible for an EPS Student Loan for the first year of attendance at an eligible postsecondary institution. Any student who is a legal resident of this state attending an eligible postsecondary institution is eligible for an EPS Student Loan for the second and subsequent years of attendance. A student who is otherwise eligible for an EPS Student Loan is eligible for such a loan for expenses as a student seeking an associate degree, baccalaureate degree, and a graduate degree.

(d) Except as otherwise provided by subsections (a) and (b) of Code Section 20-3-405.3, the interest rate for an EPS Student Loan shall be a reasonable interest rate as defined by paragraph (9) of Code Section 20-3-405.1 and as established by the authority by rule or regulation.

(e) The promissory note signed for each EPS Student Loan shall include a statement of the requirements a student must meet for



conversion of the loan to a 1 percent loan and for conversion of the loan to an interest-free loan. (Code 1981, § 20-3-405.2, enacted by Ga. L. 2008, p. 626, § 4/SB 169.)

### **20-3-405.3. Interest rate; recalculation.**

(a) Subject to the provisions of Code Section 20-3-405.4, the annual interest rate for any EPS Student Loan shall be converted to 1 percent retroactive to the origination date of the EPS Student Loan for each student who:

(1) Completes his or her course of study and earns the degree with a cumulative grade point average no lower than 2.0 on a 4.0 scale; and

(2) Completes the number of years of public service required by this paragraph:

(A) If a student has earned one degree with the assistance of one or more EPS Student Loans, the annual interest rate for each such EPS Student Loan shall be converted to 1 percent after the completion of five years of public service; or

(B) In the case of a student who has earned two degrees with the assistance of two or more EPS Student Loans, the interest rate for any EPS Student Loan used for the first degree shall be converted to 1 percent after the student has completed five years of public service. The interest rate for any EPS Student Loan used for the second degree may be converted to 1 percent after the student has completed ten years of public service, or the student may elect to apply the sixth through tenth years of public service to convert the EPS Student Loans used for the first degree to interest-free loans under subsection (b) of this Code section.

In the case of a student whose public service preceded the student's earning of the degree, the conversion of the EPS loans to 1 percent shall be on the date the student earns the degree.

(b) Subject to the provisions of Code Section 20-3-405.4, an EPS Student Loan for the first degree may be converted to an interest-free loan retroactive to the origination date of the EPS Student Loan for each student who:

(1) Completes his or her course of study and earns the degree with a cumulative grade point average no lower than 2.0 on a 4.0 scale; and

(2) Completes the number of years of public service required by this paragraph, and for conversion of one or more EPS Student Loans, completes five years of public service in addition to:

(A) The service required by subparagraph (a)(2)(A) of this Code section, for a total of ten years of public service, if the student earned one degree with the assistance of EPS Student Loans, or the student may elect to apply the fifth through tenth years of public service to conversion of EPS loans for a second degree to 1 percent loans; or

(B) The service required by subparagraph (a)(2)(B) of this Code section, for a total of 15 years of public service, to convert the loan or loans for the second degree if the student earned two degrees with the assistance of EPS Student Loans.

In the case of a student whose public service preceded the student's earning of the degree, the conversion of the EPS loans to interest-free loans shall be on the date the student earns the degree.

(c) When the annual interest rate is converted to 1 percent in accordance with subsection (a) of this Code section, the authority shall recalculate the balance owed on the loan to reflect the retroactive change in the interest rate.

(d) The steps of the recalculation required by subsections (a) and (c) of this Code section shall include the following:

(1) Calculate the total interest paid by the student on the loan to date;

(2) Calculate the total principal paid by the student on the loan to date;

(3) Calculate the total of fees other than interest paid by the student on the loan to date;

(4) Calculate the current balance owed on the loan by subtracting the principal paid by the student on the loan to date from the original amount borrowed;

(5) Calculate the amount of interest due on the loan from its origination to date at the rate of 1 percent;

(6) Subtract the amount of interest due at 1 percent calculated in paragraph (5) of this subsection from the total interest paid by the student to date calculated in paragraph (1) of this subsection;

(7) Add the difference calculated in paragraph (6) of this subsection to the principal paid by the student to date in paragraph (2) of this subsection; this sum shall become the new total principal paid by the student on the loan; and

(8) Subtract the new principal paid calculated in paragraph (7) of this subsection from the original amount borrowed by the student in this loan to produce the new balance owed by the student on the loan.

If the new principal paid calculated in paragraph (7) of this subsection equals or exceeds the original amount borrowed by the student in this loan, the new balance is zero.

(e) When an EPS Student Loan is converted to an interest-free loan in accordance with subsection (b) of this Code section, the authority shall recalculate the balance owed on the loan to reflect the retroactive change in the interest rate. This recalculation shall be based upon the loan as it exists when it is converted to an interest-free loan.

(f) The steps of the recalculation required by subsections (b) and (e) of this Code section shall include the following:

(1) Calculate the total interest paid by the student on the loan to date;

(2) Calculate the total principal paid by the student on the loan to date;

(3) Calculate the total of fees other than interest paid by the student on the loan to date;

(4) Calculate the current balance owed on the loan by subtracting the principal paid by the student on the loan to date from the original amount borrowed;

(5) Add the amount of interest calculated in paragraph (1) of this subsection to the principal paid by the student to date in paragraph (2) of this subsection; this sum shall become the new total principal paid by the student on the loan; and

(6) Subtract the new principal paid calculated in paragraph (5) of this subsection from the original amount borrowed by the student in this loan to produce the new balance owed by the student on the loan. If the new principal paid calculated in paragraph (5) of this subsection equals or exceeds the original amount borrowed by the student in this loan, the new balance is zero. (Code 1981, § 20-3-405.3, enacted by Ga. L. 2008, p. 626, § 4/SB 169; Ga. L. 2009, p. 8, § 20/SB 46.)

#### **20-3-405.4. Conversion to interest free loans.**

When a student meets the requirements for conversion of one or more EPS loans to a 1 percent rate or to an interest-free loan or loans, the student may elect to waive the conversion of the EPS loan or loans for that degree and apply all or part of the student's years of completed public service to one or more EPS loans for a subsequent degree, without regard to whether such EPS loan or loans for a subsequent degree exist at the time of the student's election. In any event, each year of completed public service may be applied only to a single degree and the student is not authorized to change an election after notifying the



authority in writing of his or her election. (Code 1981, § 20-3-405.4, enacted by Ga. L. 2008, p. 626, § 4/SB 169.)

**20-3-405.5. Separate fund for loans; fees.**

(a) The authority shall establish and maintain a separate fund for loans in accordance with this subpart to which shall be credited:

- (1) State funds appropriated for use for EPS Student Loans;
- (2) Moneys received by gift, donation, or otherwise for EPS Student Loans;
- (3) Outstanding EPS Student Loans held by the authority; and
- (4) Principal and interest collected on EPS Student Loans held by the authority.

(b) Beginning with the first fiscal year following the fiscal year in which the fund has a balance of \$500,000.00 or more, for each fiscal year, the authority shall determine the amount of moneys available for loans under this subpart and shall determine which eligible applicants receive loans by a random selection process in which each eligible applicant has an equal chance of being selected for a loan.

(c) The authority shall be entitled to establish a reasonable fee for the processing and collecting of EPS Student Loans. Such fees shall be established by the authority by rule or regulation. (Code 1981, § 20-3-405.5, enacted by Ga. L. 2008, p. 626, § 4/SB 169.)

**20-3-405.6. Repayment schedule; default.**

(a) The authority shall by rule and regulation establish a repayment schedule or schedules for EPS Student Loans. Students shall be required to pay accrued interest annually on the loan or loans while attending a postsecondary institution except in cases of financial hardship. Students shall not be required to begin the repayment of the principal of such loans until the earliest occurrence of one of the following:

- (1) The student completes his or her course of study;
- (2) The student graduates from an eligible postsecondary institution;
- (3) A calendar year has passed since the student borrowed the maximum amount of EPS loans for the degree the student is seeking under subsection (b) of Code Section 20-3-405.2; or
- (4) The student has not been enrolled in an eligible postsecondary institution for two academic quarters or two academic semesters.

(b) If the student defaults on the repayment of one or more EPS loans, the interest rate for such loan or loans shall be converted to the reasonable interest rate as defined in Code Section 20-3-405.1. (Code 1981, § 20-3-405.6, enacted by Ga. L. 2008, p. 626, § 4/SB 169.)

### **20-3-405.7. Ineligibility.**

A student is ineligible for any loan described in this subpart if the student:

(1) Is not a United States citizen or a permanent resident alien who meets the definition of an eligible noncitizen under federal Title IV requirements;

(2) Has not complied with United States Selective Service System requirements for registration, if such requirements are applicable to the student;

(3) Is in default on a federal Title IV educational loan or a State of Georgia educational loan, provided that a student who is otherwise eligible and has fully repaid the defaulted loan will be eligible to obtain a loan under this subpart for future academic terms but not retroactively;

(4) Owes a refund on a federal Title IV student financial aid program or a Georgia student financial aid program, provided that a student who is otherwise eligible and has fully paid the refund owed will be eligible to obtain a loan under this subpart for future academic terms but not retroactively;

(5) Has been convicted of a felony offense involving marijuana, a controlled substance, or a dangerous drug as set out in Code Section 20-1-23 or 20-1-24 of the "Drug-free Postsecondary Education Act of 1990," provided that such ineligibility extends from the date of conviction to the completion of the next academic term;

(6) Is incarcerated; or

(7) Does not meet each qualification listed in this subpart and applicable to the student. (Code 1981, § 20-3-405.7, enacted by Ga. L. 2008, p. 626, § 4/SB 169.)

### **Subpart 4D**

### **Taxpayer Contribution to Student Loan Funds**

### **20-3-409. Taxpayer opportunity to contribute to student loan funds; contribution amounts.**

(a) Each Georgia income tax return form for taxable years beginning on or after January 1, 2008, shall contain appropriate language, to be

determined by the state revenue commissioner, offering the taxpayer the opportunity to contribute to the funds established for student loans by Code Sections 20-3-395.2, 20-3-400.4, and 20-3-405.5 by either donating all or any part of any tax refund due and by authorizing a reduction in the refund check otherwise payable, or by contributing any amount over and above any amount of tax owed by adding that amount to the taxpayer's payment. The instructions accompanying the income tax return shall include a description of the purposes for which these funds were established and the intended use of moneys received from the contributions, and shall explain that any donation will be evenly divided between the three funds. Each taxpayer required to file a state income tax return who desires to contribute to these funds may designate such contribution as provided on the appropriate income tax return form.

(b) The Department of Revenue shall determine annually the total amount so contributed, and shall transmit such amount to the authority for even division among and deposit in the funds established by Code Sections 20-3-395.2, 20-3-400.4, and 20-3-405.5. (Code 1981, § 20-3-409, enacted by Ga. L. 2008, p. 626, § 5/SB 169.)

#### Subpart 5

#### Tuition Equalization Grants at Private Colleges and Universities

#### **20-3-410. Legislative findings; purpose of subpart.**

(a) The General Assembly finds that the facilities of accredited independent colleges and universities located within the state can be used more effectively in the public interest by the grant of financial assistance to citizens who choose to attend such colleges and universities and that the provision of such assistance will reduce the costs to the taxpayers of the state below the cost of providing similar instruction to such citizens within the university system. The purpose of the General Assembly, as provided for in this subpart, is to enable the authority to provide tuition equalization grant assistance to citizens who choose to attend such accredited private colleges and universities located within the state.

(b) The General Assembly further finds that, because of their location within the state, the four-year and graduate level institutions of the University System of Georgia are not equally available to citizens in certain areas of the state. The General Assembly further finds that extension of the program of tuition equalization grants established by this subpart to include certain students attending certain out-of-state institutions will be in the public interest as an effective and efficient means of making four-year and graduate level institutions of higher



education more equally available to all citizens of the state. (Ga. L. 1971, p. 906, § 1; Code 1933, § 32-3758, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 1982, p. 1699, §§ 1, 4.)

### 20-3-411. Definitions.

As used in this subpart, the term:

(1) "Academic year" means a period of time, typically nine months, in which a full-time student is expected to complete the equivalent of at least two semesters' or three quarters' academic work.

(2) "Approved school" means:

(A) A nonproprietary institution of higher education located in this state which is not a branch of the university system; which is not a four-year or graduate level institution of higher education that is, or is a part of, a college or university system that is owned and operated by a state other than Georgia; which is accredited by the Southern Association of Colleges and Schools; which is not a graduate level school or college of theology or divinity; and which is not presently receiving state funds under Article 4 of this chapter; provided, however, that an institution which otherwise meets the requirements of this definition and of this subpart except for the lack of accreditation by the Southern Association of Colleges and Schools shall be deemed to be an "approved school" during the period that the institution holds candidate for accreditation status with the Southern Association of Colleges and Schools; provided, further, that an institution which was previously accredited by the Southern Association of Colleges and Schools within the last seven years and which otherwise meets the requirements of this definition and of this subpart except for the lack of accreditation by the Southern Association of Colleges and Schools shall be deemed to be an "approved school"; and

(B)(i) A qualified proprietary institution of higher education located in this state which is a baccalaureate degree-granting institution of higher education; which is accredited by the Southern Association of Colleges and Schools; which is not a Bible school or college (or, at the graduate level, a school or college of theology or divinity); which admits as regular students only persons who have a high school diploma, a general educational development (GED) diploma, or a degree from an accredited postsecondary institution; whose students are eligible to participate in the federal Pell Grant program; which has been reviewed and approved for operation and for receipt of tuition equalization grant funds by the Georgia Nonpublic Postsecondary Education Commission; which is domiciled and incorporated

in the State of Georgia; which has been in existence in the State of Georgia for at least ten years; and which met all of the requirements of this subparagraph by January 1, 2011; provided, however, that the criteria for approval for receipt of tuition equalization grant funds shall include but not be limited to areas of course study, quality of instruction, student placement rate, research and library sources, faculty, support staff, financial resources, physical plant facilities resources, and support and equipment resources.

(ii) Any proprietary institution that is otherwise qualified pursuant to division (i) of this subparagraph on July 1, 1995, shall be deemed to be eligible for receipt of tuition equalization grant funds subject, however, to any subsequent review of such approval pursuant to any proper regulations which may thereafter be adopted in accordance with paragraph (10) of subsection (b) of Code Section 20-3-250.5 applicable to all qualified proprietary institutions.

(iii) Any proprietary institution of higher education that is otherwise qualified pursuant to division (i) of this subparagraph on January 1, 2011, shall continue to be an approved school pursuant to this paragraph as long as it continues to meet the requirements of division (i) of this subparagraph as such existed on March 14, 2011.

(3) “Eligible student” means a person who:

(A) Is enrolled in or accepted for enrollment as a full-time undergraduate level student in an approved school or as a graduate level student if funds are specifically appropriated in appropriations Acts of the General Assembly for payment of grants to graduate level students;

(B) Is or will be a citizen of Georgia for a period of at least 12 months immediately prior to each date of registration in the approved school;

(C) Is not knowingly promoting or engaging in any activity which is determined by the approved school’s governing body to be detrimental to the school; and

(D) Meets the eligibility requirements for the HOPE program as set forth in paragraph (1) of subsection (a) and in subsection (b) of Code Section 20-3-519.1.

(4) “Full-time student” means an undergraduate student who enrolls for a minimum of 12 academic hours, or ten academic hours in the case of a graduate student. (Ga. L. 1971, p. 906, § 3; Ga. L. 1974, p. 487, § 2; Ga. L. 1975, p. 1161, §§ 1, 2; Ga. L. 1976, p. 780, § 1;

Code 1933, § 32-3759, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 1981, p. 735, § 45; Ga. L. 1982, p. 1699, §§ 2, 5; Ga. L. 1985, p. 283, § 1; Ga. L. 1994, p. 697, § 1; Ga. L. 1995, p. 265, § 2; Ga. L. 1996, p. 6, § 20; Ga. L. 2001, p. 4, § 20; Ga. L. 2008, p. 112, § 1/SB 480; Ga. L. 2011, p. 1, § 11/HB 326.)

**The 2011 amendment,** effective March 15, 2011, in subparagraph (2)(A), inserted “which is not a four-year or graduate level institution of higher education that is, or is a part of, a college or university system that is owned and operated by a state other than Georgia;” near the beginning, and added “and” at the end; deleted former subparagraph (2)(B), which read: “A nonproprietary institution of higher education located outside the State of Georgia which is a four-year or graduate level institution of higher education that is, or is a part of, a college or university system that is owned and operated by a state other than Georgia; which is accredited by the Southern Association of Colleges and Schools; which is not a graduate level school or college of theology or divinity; and which is located within 50 road miles, by the nearest practical route of travel, of the home residence of one or more eligible students. The term ‘home residence,’ for purposes of this subpart, shall, in the case of a dependent student, mean the principal residence of the parent or legal guardian of a student; and”; redesignated former subparagraph (2)(C) as present division (2)(B)(i); in division (2)(B)(i), substituted “the Southern Association of Colleges and Schools” for “a regional accrediting agency recognized by the United States Department of Education” near the beginning, substituted “which is domiciled and incorporated in the State of Georgia; which has been in existence in the State of Georgia for at least ten years; and which met all of the requirements of this subparagraph by

January 1, 2011;” for “and which has been in existence for at least ten years;” near the middle; and added division (2)(B)(iii); substituted the present provisions of subparagraph (3)(D) for the former provisions, which read: “In the case of an approved school located outside the State of Georgia, is enrolled or accepted for enrollment therein at an academic level beyond the sophomore academic classification and whose home residence is, by the nearest practical route of travel, located within 50 road miles of the approved school and more than 50 road miles from the nearest four-year institution of the University System of Georgia.”; and deleted “, and students who are inmates in an institution administered by the Department of Corrections” following “graduate student” at the end of paragraph (4). See editor’s note for applicability.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1995, “July 1, 1995” was substituted for “the effective date of this Act” in division (2)(C)(ii) (now division (2)(B)(ii)).

Pursuant to Code Section 28-9-5, in 2011, “as such existed on March 14, 2011” was substituted for “as such existed on the day prior to the effective date of this division” in division (2)(B)(iii).

**Editor’s notes.** — Ga. L. 2011, p. 1, § 17/HB 326, not codified by the General Assembly, provides, in part, that the 2011 amendment shall be applicable to postsecondary students beginning in the fall of 2011.

**Law reviews.** — For article, “Education: Postsecondary Education,” see 28 Ga. St. U. L. Rev. 193 (2011).

## OPINIONS OF THE ATTORNEY GENERAL

“Approved school” for purposes of tuition equalization grants must have been in existence in Georgia for ten years prior to being eligible to receive grant funds in addition to satisfying other statutory cri-

teria; eligibility also depends upon a school being a baccalaureate degree granting institution on or after July 1, 1995. 1995 Op. Att’y Gen. No. 95-34.



**20-3-412. Entitlement to grants as specified in the appropriations Acts; restrictions.**

Each eligible student is entitled to a tuition equalization grant each academic year, as specified in appropriations Acts of the General Assembly. No grants shall be made to graduate students unless specifically authorized in appropriations Acts of the General Assembly. It is the intent of the General Assembly and the purpose of this program to provide tuition equalization grants to all Georgia students attending approved schools at all levels and throughout the entire calendar year whenever sufficient funds are available to the state. In no event shall an eligible student receive a tuition equalization grant for more than 127 semester hours or 190 quarter hours of his or her undergraduate program. (Ga. L. 1971, p. 906, § 2; Ga. L. 1974, p. 487, § 1; Ga. L. 1975, p. 1320, § 1; Ga. L. 1976, p. 1717, § 1; Code 1933, § 32-3760, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 1981, p. 735, § 46; Ga. L. 1981, p. 1377, § 1; Ga. L. 1985, p. 550, § 1; Ga. L. 2003, p. 904, § 1.)

**20-3-413. Application for and payment of grants; certification of eligibility; refunds if students fail to enroll.**

Each eligible student wishing to receive payment of the grant provided for in this subpart shall submit to the school an application for the grant payment at the time and in accordance with procedures prescribed by the authority. The authority is authorized to define such terms and prescribe such rules, regulations, and procedures as may be reasonable and necessary to carry out the purposes of this subpart. The authority shall not approve payment of any grant until it has received from an appropriate officer of the approved school a certification that the student applying for the grant is an eligible student. Upon timely receipt of such certification, in proper form, the authority is authorized to pay the grant to the approved school on behalf of and to the credit of the student. In the event a student on whose behalf a grant is paid shall not enroll as a full-time student for the school term for which the grant is paid, the school shall make a refund to the authority in accordance with regulations of the authority. (Ga. L. 1971, p. 906, §§ 4, 5; Ga. L. 1975, p. 1161, § 3; Code 1933, § 32-3761, enacted by Ga. L. 1980, p. 835, § 3.)

**20-3-414. Pro rata reduction of grants when funds are insufficient.**

In the event funds available to the authority are not sufficient to enable the authority to pay on behalf of eligible students the full grant prescribed by the General Assembly, grants payable for the remaining school terms shall be reduced by the authority on a pro rata basis. (Ga.

L. 1971, p. 906, § 7; Code 1933, § 32-3762, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 1981, p. 735, § 47.)

**20-3-415. Audits of schools; refund of grants for ineligible students.**

Every approved school shall be subject to examination by the state auditor for the sole purpose of determining whether such school has properly certified eligibility and enrollment of students and credited grants paid on behalf of such students. However, nothing in this subpart shall be construed to interfere with the authority of such school to determine admissibility of students or to control its own curriculum, philosophy, purpose, or administration. In the event it is determined that a school knowingly or through error certified an ineligible student to be eligible for a grant under this subpart, the amount of the grant paid to the school pursuant to such certification shall be refunded by the school to the authority. (Ga. L. 1971, p. 906, § 6; Code 1933, § 32-3763, enacted by Ga. L. 1980, p. 835, § 3.)

**20-3-416. Penalty for furnishing or accepting false statement as to eligibility.**

Any person who knowingly makes or furnishes any false statement or misrepresentation, or who accepts such statement or misrepresentation knowing it to be false, for the purpose of enabling an ineligible student to obtain wrongfully a grant under this subpart shall be guilty of a misdemeanor. (Ga. L. 1971, p. 906, § 8; Code 1933, § 32-3764, enacted by Ga. L. 1980, p. 835, § 3.)

Subpart 5A

North Georgia College Military Scholarships

**20-3-420. Legislative purpose.**

The General Assembly finds that North Georgia College, a unit of the University System of Georgia, is widely recognized as one of the most outstanding senior military colleges in the United States and that its outstanding status as a senior military college has been formally recognized by the board of regents and by the Department of the Army of the United States. The purpose of this subpart is to recognize this status of North Georgia College and to enable Georgia's most gifted young people who are interested in pursuing a military career to attend the state's premier senior military college under a full scholarship. (Ga. L. 1980, p. 1292, § 2; Code 1933, § 32-3783, enacted by Ga. L. 1981, p. 735, § 51.)

**20-3-421. Eligibility for scholarship.**

(a) In order for a student to qualify as a nominee for and to be a recipient of a scholarship under this subpart, the student shall meet the following standards and requirements:

(1) The student shall be a resident of Georgia;

(2) The student shall have demonstrated academic excellence at the high school level;

(3) The student must meet mental and physical health standards required for commission in the Army National Guard; and

(4) The student shall qualify for regular admission to North Georgia College.

(b) If selected as a recipient of a scholarship under this subpart, a student, in order to maintain eligibility for the scholarship, shall:

(1) Maintain standards of academic excellence and standards of conduct as established by North Georgia College;

(2) Maintain minimum full-time enrollment of at least 12 hours each quarter;

(3) Participate in military and Reserve Officers' Training Corps programs at North Georgia College;

(4) Maintain membership in good standing in the Army National Guard;

(5) Demonstrate the qualities required of a commissioned officer in the United States armed forces; and

(6) Upon graduation from North Georgia College, accept a commission as a second lieutenant and agree to serve not less than four years in the Georgia Army National Guard; however, terms of the scholarship may be met by acceptance of a commission and active duty service for not less than four years in the United States Army or a combination of service in the active army and the Georgia Army National Guard for not less than four years upon certification by the adjutant general that no need exists in the Georgia Army National Guard at the time of the commencement of the period of active service.

(c) No recipient of a scholarship under this subpart shall be eligible to receive financial aid assistance under any other student financial aid program authorized by the laws of this state. (Ga. L. 1980, p. 1292, § 3; Code 1933, § 32-3784, enacted by Ga. L. 1981, p. 735, § 51; Ga. L. 1983, p. 778, § 1.)



**20-3-422. Nomination of candidates for scholarships.**

The authority shall establish and promulgate, consistent with this subpart, criteria for the eligibility and award of such scholarships. The authority shall, on or before February 1 of each year, select and nominate six persons from each congressional district in Georgia from a list of persons recommended to the authority by members of the General Assembly. From the persons so nominated, three persons from each congressional district shall be selected as scholarship recipients as provided in Code Section 20-3-423. (Ga. L. 1980, p. 1292, § 4; Code 1933, § 32-3785, enacted by Ga. L. 1981, p. 735, § 51; Ga. L. 1984, p. 721, § 1; Ga. L. 1987, p. 468, § 1; Ga. L. 1990, p. 1903, § 3.)

**20-3-423. Creation and composition of selection committee; duties of selection committee.**

(a) For the purpose of considering nominations submitted under Code Section 20-3-422, there is created a selection committee, the membership of which shall be as follows:

- (1) The chief executive officer of North Georgia College or his or her designated representative, who shall serve as chairperson of the selection committee;
- (2) The professor of military science at North Georgia College or his or her designated representative;
- (3) The director of admissions of North Georgia College;
- (4) A civilian faculty member of North Georgia College designated by the chief executive officer of the college;
- (5) A commissioned officer of the Army National Guard designated by the adjutant general;
- (6) The chairperson of the House Higher Education Committee or his or her designee from that committee;
- (7) The chairperson of the Senate Higher Education Committee or his or her designee from that committee; and
- (8) The executive director of the Georgia Student Finance Authority or his or her designated representative.

(b) It shall be the duty of the selection committee to select, from the six nominees from each congressional district submitted to the committee pursuant to Code Section 20-3-422, three persons from each congressional district to receive a scholarship under this subpart. In the event a congressional district does not have three qualified candidates, the committee may select a candidate or candidates at large from

alternate nominees among the original candidates without regard to the congressional district of residence. Upon selecting the recipients of scholarships, the committee shall:

(1) Notify each recipient of the scholarship;

(2) Notify each member of the legislative delegation from each congressional district of the names of the recipients of the scholarships from that congressional district; and

(3) Notify the authority of the names and addresses of the recipients of the scholarships.

(c) The selection committee shall have the following additional duties:

(1) To publish in print or electronically and maintain standards of academic excellence and conduct necessary for continued eligibility for a scholarship under this subpart; and

(2) To monitor the performance of the recipients of scholarships under this subpart in accordance with the standards promulgated under paragraph (1) of this subsection. (Ga. L. 1980, p. 1292, § 5; Code 1933, § 32-3786, enacted by Ga. L. 1981, p. 735, § 51; Ga. L. 1983, p. 778, § 2; Ga. L. 1984, p. 721, § 2; Ga. L. 1987, p. 468, § 2; Ga. L. 1990, p. 1903, § 4; Ga. L. 2001, p. 4, § 20; Ga. L. 2010, p. 838, § 10/SB 388.)

**The 2010 amendment**, effective June 3, 2010, inserted “in print or electronically” in paragraph (c)(1).

#### **20-3-424. Amount of scholarship awards; duration of awards.**

Scholarship awards made under this subpart shall cover all costs for room, board, matriculation, fees, uniform deposits, and an allowance for books and supplies. Scholarship assistance may be provided to a recipient under this article for a maximum period of 12 academic quarters. (Ga. L. 1980, p. 1292, § 7; Code 1933, § 32-3787, enacted by Ga. L. 1981, p. 735, § 51.)

#### **20-3-425. Failure of scholarship recipient to meet service obligations.**

(a) If the recipient of a scholarship under this subpart fails to honor his obligation to serve in the Army National Guard or the United States Army as provided in paragraph (6) of subsection (b) of Code Section 20-3-421, such recipient shall, at the option of the recipient, either:

(1) Serve not less than four years as an enlisted member of the Army National Guard or United States Army; or

(2) Pay to the authority an amount equal to the amount of scholarship assistance received by the recipient under this subpart, plus interest, such amount to be paid, in accordance with regulations of the authority, within five years after the recipient graduates from or terminates his enrollment in North Georgia College.

(b) Subsection (a) of this Code section shall not apply to any person who, for bona fide reasons of health as jointly verified by the authority and the selection committee, is unable to honor the obligation provided for in paragraph (6) of subsection (b) of Code Section 20-3-421. (Ga. L. 1980, p. 1292, § 8; Code 1933, § 32-3788, enacted by Ga. L. 1981, p. 735, § 51; Ga. L. 1983, p. 778, § 4.)

**20-3-426. Effect of failure to meet standards and requirements for continued eligibility for scholarship; filling of vacancies.**

(a) If at any time a recipient of a scholarship fails to meet the standards and requirements for continued eligibility as provided by the selection committee pursuant to subsection (c) of Code Section 20-3-423, such recipient shall thereby lose eligibility for the scholarship and shall be obligated to repay the same as provided in Code Section 20-3-425. The selection committee shall promptly notify the authority when a recipient loses eligibility.

(b) In the event a scholarship recipient fails to meet the standards for retention or otherwise surrenders the scholarship, the committee may select a candidate to fill the vacancy for the remaining period of the scholarship. The nominees shall be required to meet all criteria established for the four-year scholarship. Such recipients of scholarships shall incur the same obligations as a four-year scholarship recipient; provided, however, that such recipients of scholarships of less than four years shall only be required to serve the number of years in the Georgia Army National Guard or number of years of active duty service in the United States Army or number of years in a combination of service in the active army and the Georgia Army National Guard which corresponds to the period or number of years of such scholarship. (Ga. L. 1980, p. 1292, § 9; Code 1933, § 32-3789, enacted by Ga. L. 1981, p. 735, § 51; Ga. L. 1983, p. 778, § 3; Ga. L. 1984, p. 22, § 20; Ga. L. 1992, p. 6, § 20; Ga. L. 2002, p. 1151, § 1.)

**20-3-427. Promulgation of rules and regulations by authority; funding of scholarship program.**

The authority shall, consistent with this subpart, promulgate such rules and regulations as may be necessary to administer the scholarship program provided for in this subpart. The funds necessary to carry



out this subpart shall be paid from funds appropriated to the authority for the purposes of this subpart. (Ga. L. 1980, p. 1292, § 10; Code 1933, § 32-3790, enacted by Ga. L. 1981, p. 735, § 51.)

### Subpart 6

#### North Georgia College Reserve Officers' Training Corps Grant Program

#### **20-3-430. Legislative findings; purpose of subpart.**

The General Assembly finds that it is essential for the national defense that persons be encouraged to consider military leadership positions as an honorable and rewarding profession and that North Georgia College, Georgia's only state supported military college, plays a significant role in preparing and training students for professional life in the military as a profession. It is the purpose of the General Assembly, as provided for in this subpart, to encourage students to enroll in North Georgia College and its military training program by providing for tuition grant assistance to such students. (Ga. L. 1976, p. 503, § 1; Code 1933, § 32-3766, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 1992, p. 6, § 20.)

#### **20-3-431. "Eligible student" defined.**

For purposes of this subpart, the term "eligible student" shall mean a person who:

(1) Is enrolled in or accepted for enrollment in North Georgia College for a minimum of 12 academic hours;

(2) Is or will be a citizen of this state for a period of at least 12 months immediately prior to the date of registration therein; and

(3) Is enrolled in or plans to enroll in the Army Reserve Officers' Training Corps program at North Georgia College. (Ga. L. 1976, p. 503, § 3; Code 1933, § 32-3767, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 2009, p. 8, § 20/SB 46.)

#### **20-3-432. Amount for each eligible student.**

There is granted to each eligible student attending North Georgia College the sum of \$500.00 per academic quarter. (Ga. L. 1976, p. 503, § 2; Ga. L. 1978, p. 1385, § 1; Code 1933, § 32-3768, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 1995, p. 885, § 1.)

**20-3-433. Application for and payment of grants; certification of eligibility; refunds if students fail to enroll.**

Each eligible student wishing to receive the grant provided for in this subpart shall submit to North Georgia College an application for the grant payment at the time and in accordance with procedures prescribed by the authority. The authority is authorized to define such terms and prescribe such rules, regulations, and procedures as may be reasonable and necessary to carry out the purposes of this subpart. The authority shall not approve payment of any grant until it has received from an appropriate officer of North Georgia College a certification that the student applying for the grant is an eligible student. Upon timely receipt of such certification, in proper form, the authority is authorized to pay the grant to North Georgia College on behalf of and to the credit of the student. In the event a student on whose behalf a grant is paid shall not enroll as a full-time student for the school term for which the grant is paid, North Georgia College shall make a refund to the authority in accordance with regulations of the authority. (Ga. L. 1976, p. 503, §§ 4, 5; Code 1933, § 32-3769, enacted by Ga. L. 1980, p. 835, § 3.)

**20-3-434. Pro rata reduction of grants when funds are insufficient.**

In the event funds available to the authority are not sufficient to enable the authority to pay on behalf of eligible students the full grant prescribed by the General Assembly, grants payable for the remaining school terms shall be reduced by the authority on a pro rata basis. (Ga. L. 1976, p. 503, § 7; Code 1933, § 32-3770, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 1981, p. 735, § 48.)

**20-3-435. Audits of college; refund of grants for ineligible students.**

North Georgia College shall be subject to examination by the state auditor for the sole purpose of determining whether the school has properly certified eligibility and enrollment of students and credited grants paid on behalf of such students. However, nothing in this subpart shall be construed to interfere with the authority of the school to determine admissibility of students or to control its own curriculum, philosophy, purpose, or administration. In the event it is determined that the school knowingly or through error certified an ineligible student to be eligible for a grant under this subpart, the amount of the grant paid to the school pursuant to such certification shall be refunded by the school to the authority. (Ga. L. 1976, p. 503, § 6; Code 1933, § 32-3771, enacted by Ga. L. 1980, p. 835, § 3.)

**20-3-436. Penalty for furnishing or accepting false statement as to eligibility.**

Any person who knowingly makes or furnishes any false statement or misrepresentation or who accepts such statement or misrepresentation knowing it to be false for the purpose of enabling an ineligible student to obtain wrongfully a grant under this subpart shall be guilty of a misdemeanor. (Ga. L. 1976, p. 503, § 8; Code 1933, § 32-3772, enacted by Ga. L. 1980, p. 835, § 3.)

**Subpart 6A****Tuition Grant Assistance for North Georgia College and State University****20-3-440. Legislative findings.**

The General Assembly finds that it is essential for the national defense that persons be encouraged to consider military leadership positions as an honorable and rewarding profession and that North Georgia College and State University, Georgia's only state supported military college, plays a significant role in preparing and training students for professional life in the military as a profession. It is the purpose of the General Assembly, as provided for in this subpart, to encourage students to enroll in North Georgia College and State University and its military training program and to encourage such students to accept military commissions by providing for tuition grant assistance to such students. (Code 1981, § 20-3-440, enacted by Ga. L. 2008, p. 626, § 6/SB 169.)

**20-3-441. "Eligible student" defined.**

For purposes of this subpart, the term "eligible student" shall mean a person who:

(1) Is enrolled in or accepted for enrollment in North Georgia College and State University for a minimum of 12 academic hours;

(2) Is or will be a citizen of this state for a period of at least 12 months immediately prior to the date of registration therein;

(3) Is enrolled in or plans to enroll in the Army Reserve Officers' Training Corps program at North Georgia College and State University; and

(4) Has signed a contract to accept a commission, to be effective upon graduation, no later than the end of the student's junior year as an officer in any branch of the armed services of the United States or



the Army National Guard. (Code 1981, § 20-3-441, enacted by Ga. L. 2008, p. 626, § 6/SB 169.)

**20-3-442. Amount of grant.**

There is granted to each eligible student attending North Georgia College and State University the sum of \$1,500.00 per academic semester. (Code 1981, § 20-3-442, enacted by Ga. L. 2008, p. 626, § 6/SB 169.)

**20-3-443. Application for grants; certification of eligibility; re-funds.**

Each eligible student wishing to receive the grant provided for in this subpart shall submit to North Georgia College and State University an application for the grant payment at the time and in accordance with procedures prescribed by the authority. The authority is authorized to define such terms and prescribe such rules, regulations, and procedures as may be reasonable and necessary to carry out the purposes of this subpart. The authority shall not approve payment of any grant until it has received from an appropriate officer of North Georgia College and State University a certification that the student applying for the grant is an eligible student. Upon timely receipt of such certification, in proper form, the authority is authorized to pay the grant to North Georgia College and State University on behalf of and to the credit of the student. In the event a student on whose behalf a grant is paid shall not enroll as a full-time student for the school term for which the grant is paid, North Georgia College and State University shall make a refund to the authority in accordance with regulations of the authority. (Code 1981, § 20-3-443, enacted by Ga. L. 2008, p. 626, § 6/SB 169.)

**20-3-444. Pro rata reduction when funds are insufficient.**

In the event funds available to the authority are not sufficient to enable the authority to pay on behalf of eligible students the full grant prescribed by the General Assembly, grants payable for the remaining school terms shall be reduced by the authority on a pro rata basis. (Code 1981, § 20-3-444, enacted by Ga. L. 2008, p. 626, § 6/SB 169.)

**20-3-445. Audits of the college.**

North Georgia College and State University shall be subject to examination by the state auditor for the sole purpose of determining whether the school has properly certified eligibility and enrollment of students and credited grants paid on behalf of such students. However, nothing in this subpart shall be construed to interfere with the

authority of the school to determine admissibility of students or to control its own curriculum, philosophy, purpose, or administration. In the event it is determined that the school knowingly or through error certified an ineligible student to be eligible for a grant under this subpart, the amount of the grant paid to the school pursuant to such certification shall be refunded by the school to the authority. (Code 1981, § 20-3-445, enacted by Ga. L. 2008, p. 626, § 6/SB 169.)

**20-3-446. Penalty for false statements.**

Any person who knowingly makes or furnishes any false statement or misrepresentation or who accepts such statement or misrepresentation knowing it to be false for the purpose of enabling an ineligible student to obtain wrongfully a grant under this subpart shall be guilty of a misdemeanor. (Code 1981, § 20-3-446, enacted by Ga. L. 2008, p. 626, § 6/SB 169.)

Subpart 7

Grants to Children of Law Enforcement Officers, Firefighters, and Prison Guards

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| <p><b>Cross references.</b> — Indemnification of law enforcement officers, firemen, and prison guards killed or injured in line of duty, Ga. Const. 1983, Art. III, Sec. VI,</p> | <p>Para. VI. Program for indemnification of law enforcement officers, firefighters, and prison guards killed or injured in line of duty, § 45-9-80 et seq.</p> |
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**20-3-450. Legislative findings; purpose of subpart.**

The General Assembly finds that certain citizens are called upon to enforce the criminal laws of this state and to protect persons and properties within the state and that they provide a valuable and vital public service to the state and to citizens and properties within the state at a great personal sacrifice and risk to their own lives and well-being. The purpose of the General Assembly, as provided for in this subpart, is to enable the authority to provide educational grant assistance to the children of such persons who are killed or permanently disabled in line of duty. (Code 1933, § 32-3774, enacted by Ga. L. 1980, p. 835, § 3.)

**20-3-451. Definitions.**

As used in this subpart, the term:

- (1) “Academic year” means a period of time, typically nine months, in which a full-time student is expected to complete the equivalent of at least two semesters’ or three quarters’ academic work.

(2) "Approved school" means the same schools as enumerated in Code Section 20-3-391 relative to the state student incentive grant program.

(3) "Firefighter" means a person employed by the state or by any county or municipal fire department whose duties include extinguishing fires or investigating cases of suspected arson.

(4) "Law enforcement officer" means a sheriff, deputy sheriff, police officer, policeman, peace officer, officer or member of the Department of Public Safety, or other officer or official who has the power of arrest and who is responsible for enforcing the criminal laws of the state or its political subdivisions.

(5) "Permanent disability" or "permanently disabled" means physical incapacity to perform the duties of a law enforcement officer, firefighter, or prison guard as determined by the public employer designated in paragraph (3) of Code Section 20-3-453, provided that such incapacity is likely to be permanent based upon current medical standards.

(6) "Prison guard" means a person employed by the state or by a county, municipality, or other political subdivision of the state whose principal duties relate to supervision and incarceration of persons accused or convicted of violation of the criminal laws of the state or any county, municipality, or other political subdivision thereof. (Ga. L. 1972, p. 1133, § 2; Ga. L. 1976, p. 541, § 1; Code 1933, § 32-3775, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 2002, p. 660, § 4; Ga. L. 2002, p. 1259, § 11.)

#### **20-3-452. Amount of grants to each eligible student.**

There is granted to each eligible student attending an approved school the sum of \$2,000.00 per academic year. No person shall be eligible to receive grant assistance provided under this subpart in excess of \$8,000.00. Grant assistance to eligible students under this subpart shall be payable during the period of a summer school quarter or semester. The payment of grants to eligible students under this subpart shall be contingent upon the appropriation of funds by the General Assembly for the purposes of this subpart in annual appropriations Acts of the General Assembly. (Ga. L. 1972, p. 1133, § 5; Code 1933, § 32-3776, enacted by Ga. L. 1980, p. 835, § 3.)

#### **20-3-453. Eligibility of students.**

No grants shall be payable to any person under this subpart who fails to meet any of the following qualifications or restrictions:

(1) Such person must be the child, either natural or adopted, of a law enforcement officer, firefighter, or prison guard who has been



permanently disabled or killed in the line of duty or while performing the duties to which he was assigned in the normal course of employment. If such person is the adopted child of any such law enforcement officer, firefighter, or prison guard, such person must have been adopted and any final order of adoption issued prior to the date of the accident or event causing the death or permanent disability of such parent;

(2) Such person must have been a citizen of this state for a period of at least 12 months immediately prior to the date of registration in an approved school and must remain a citizen of the state while receiving funds under this subpart;

(3) The deceased or disabled law enforcement officer, firefighter, or prison guard parent of such person must have been an employee, either full-time or part-time, or an officer or official, whether elected or appointed, of this state or any county, municipality, department, board, bureau, branch, agency, commission, authority, or political subdivision of the state on the date of the accident or event from which death or permanent disability resulted; and

(4) Any person otherwise meeting the conditions of this subpart shall be eligible to receive a grant even though the accident or the event causing the death or disability of such person's parent occurred prior to July 1, 1980. (Ga. L. 1972, p. 1133, § 3; Ga. L. 1976, p. 541, § 2; Code 1933, § 32-3777, enacted by Ga. L. 1980, p. 835, § 3; Ga. L. 1992, p. 6, § 20; Ga. L. 2002, p. 660, § 4; Ga. L. 2002, p. 1259, § 11.)

#### OPINIONS OF THE ATTORNEY GENERAL

**Applicant's parent must have been killed or disabled after 1969.** — Parent of an applicant for a scholarship under this section must have been killed or permanently disabled in a specific occurrence which transpired after January 1, 1969. 1973 Op. Att'y Gen. No. 73-26 (see O.C.G.A. § 20-3-453).

**Death or permanent disability must be directly attributable to a specific occurrence** to determine if the conditions of this section are met; this is not to say that death or permanent disability

must be attributable to a single occurrence, but only to specific events which would satisfy the conditions to eligibility set forth in the law. 1973 Op. Att'y Gen. No. 73-26 (see O.C.G.A. § 20-3-453).

**Child of a district attorney who was killed while apprehending burglars** does not qualify for educational grant assistance under provisions of O.C.G.A. Art. 7, Ch. 3, T. 20, or other provisions of the Official Code of Georgia Annotated. 1985 Op. Att'y Gen. No. 85-53.

#### 20-3-454. Application for and approval of grants and renewals thereof.

Any person meeting the conditions of this subpart may apply to the authority for a grant. Such application shall be submitted in writing on forms prescribed by the authority for such purpose. The applicant shall

furnish such information as may be required by the authority for determination of eligibility for the grant. The authority shall approve grant renewals only upon receipt of the recipient's application therefor and upon a finding that the recipient has successfully completed the work of the preceding school period and presents evidence that he is a student in good standing, that he remains a citizen of this state, and that he remains otherwise qualified to receive such grant under this subpart. (Ga. L. 1972, p. 1133, § 4; Code 1933, § 32-3778, enacted by Ga. L. 1980, p. 835, § 3.)

**20-3-455. Administration of program; physical examinations.**

The authority is authorized to prescribe such rules and regulations as may be necessary or convenient for administration of this program and to establish procedures for determination of eligibility of applicants. The authority is also authorized to establish standards and procedures for verifying the death or permanent disability of the applicant's parent and for such purpose is authorized to require a physical examination and to pay for the cost of such examination from funds appropriated for use by the authority for the purposes of this subpart. (Ga. L. 1972, p. 1133, § 7; Code 1933, § 32-3779, enacted by Ga. L. 1980, p. 835, § 3.)

Subpart 8

Regents' Opportunity Assistance Program

**20-3-470. Regents' opportunity assistance program for graduate and professional degree students authorized.**

The authority is authorized to establish and administer a program of scholarships, grants, or cancelable loans to economically disadvantaged students who are residents of Georgia enrolled in a graduate or professional degree program in a branch of the university system. The eligibility of students and the criteria for the award of such financial aid shall be determined by the board of regents. Such assistance may be awarded to the extent that funds are provided therefor in the annual appropriations Act of the General Assembly. In the event such assistance shall be provided in the form of cancelable loans, such loans shall be guaranteed by the corporation. As used in this Code section, the term "resident of Georgia" shall mean any person classified by the board of regents as a resident of Georgia for tuition and matriculation fee purposes. (Ga. L. 1978, p. 1687, § 1; Code 1933, § 32-3781, enacted by Ga. L. 1980, p. 835, § 3.)

**Subpart 9****Loans for Attendance at Colleges of Osteopathic Medicine****20-3-475. Legislative intent.**

The General Assembly finds that at times areas of the state have an inadequate supply of persons who are licensed to practice primary care medicine. It is the purpose of this subpart to increase the number of Georgia resident students who enroll in out-of-state colleges of osteopathic medicine in the hope that a substantial portion of that number will, following graduation, return to Georgia and practice primary care medicine in an approved medically underserved area of the state or approved hospital or facility and thereby provide an increased level of primary medical care available to the people of this state. (Code 1981, § 20-3-475, enacted by Ga. L. 1985, p. 450, § 1.)

**20-3-476. Authorization and administration of loan program for attendance at colleges of osteopathic medicine.**

(a) To the extent provided for by the General Assembly in annual appropriations Acts, the authority is authorized under this subpart to make service cancelable education loans to residents of Georgia who are enrolled or accepted for enrollment in colleges of osteopathic medicine located within the United States, provided the college is accredited or provisionally accredited by the Bureau of Professional Education of the American Osteopathic Association and that graduates from the program of medical education in the college are eligible to apply for licensure by the Georgia Composite Medical Board.

(b) The authority is authorized to enter into agreements with such colleges as may be appropriate to accomplish the purposes of this subpart, including, without limitation, agreements whereby a college will hold open one or more admission places for qualified Georgia residents who may be selected to receive a cancelable loan under this subpart.

(c) The osteopathic medical loan program shall be administered by the authority in accordance with this subpart and reasonable rules, regulations, and procedures established by the authority. Without limiting the generality of the foregoing, the authority is authorized to establish applicant eligibility and priority requirements, require a personal interview with applicants, determine individual loan amounts, and determine the apparent ability, character, and qualifications of applicants and their fitness to become recipients of a loan, including consideration of their home area in Georgia and the likelihood, if determinable, that they will return and practice their profes-



sion in an area or at a site in Georgia that will likely enable them to repay their loans in services. The amount of loan made to an applicant shall not exceed the applicant's need for financial assistance as determined by the authority. The authority is authorized to give preference among qualified applicants to those who appear to be least able to pay costs associated with attendance at college.

(d) The principal amount of loans that may be made to a full-time student pursuant to provisions of this subpart shall not exceed \$10,000.00 per academic year of study. A student may receive loan assistance pursuant to this subpart for not more than four academic years of study. Loan proceeds shall be disbursed at such times and in such manner as prescribed by the authority and may be disbursed, in full or in part, to the college in which the student borrower is enrolled to the credit of and for and on behalf of the student.

(e) Loans made pursuant to this subpart shall be conditioned upon the recipients' agreements in writing to repay the loans in services to the public through the practice of primary care medicine in an area of the state that is approved by the authority for purposes of this subpart as being a medically underserved area or in a hospital or facility operated by or under the jurisdiction of the Department of Community Health or the Department of Corrections. Loans shall bear interest at the rate of 12 percent per annum from each date of disbursement of loan proceeds by the authority. For each year of practice by a loan recipient of primary care medicine in an authority approved area, hospital, or facility, the loan recipient shall be given credit for repayment of loan amounts received by the recipient under this subpart for one academic year of study or its equivalent as a full-time student. To the extent that loans made under this subpart are repaid in approved services rendered, all interest due the authority on such loans shall likewise be canceled. Loans made under this subpart that are not repaid in approved services rendered shall, together with interest thereon, be repaid to the authority in cash at times prescribed by the authority. Each applicant shall, before receiving the proceeds of a loan, enter into a written agreement with the authority, execute a promissory note, or sign such other documents as may be required by the authority, the terms and conditions of which shall be in accordance with and designed to accomplish the purposes of this subpart.

(f) If a loan applicant under this subpart is eligible to receive a guaranteed education loan in accordance with the provisions of Part 2 of this article and the federal act, the authority is authorized in its discretion to lend all or a portion of the loan amount approved for the applicant under this subpart to the applicant as a guaranteed educational loan pursuant to Part 2 of this article and the federal act. In such cases, the provisions of Part 2 of this article and the federal act shall

govern all terms and conditions of the loan; provided, however, that the right of the recipient to repay such loan through services rendered to the state as provided for in this subpart shall not be diminished.

(g) The making of service cancelable loans to osteopathic medical students under this subpart shall not be construed to contravene provisions of paragraph (1) of subsection (b) of Code Section 20-3-374.

(h) Funds made available to the authority for purposes of this subpart but not used for such purposes during any fiscal year and loans previously made by the authority as to which the borrower no longer has a right to repay through services rendered shall become a part of the general loan fund of the authority provided for in Code Section 20-3-373. (Code 1981, § 20-3-475, enacted by Ga. L. 1982, p. 1860, § 1; Ga. L. 1983, p. 3, § 16; Code 1981, § 20-3-476, enacted by Ga. L. 1985, p. 450, § 1; Ga. L. 2008, p. 12, § 2-2/SB 433; Ga. L. 2009, p. 859, § 2/HB 509.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1985, “Department of Corrections” was substituted for “Department of Offender Rehabilitation” in the first sentence of subsection (e).

## Subpart 10

### Grants to Children of Georgia National Guard Members

#### 20-3-480. Definitions.

As used in this subpart, the term:

(1) “Approved school” means the same schools as enumerated in Code Section 20-3-391 relative to the state student incentive grant program.

(2) “Eligible student” means a person 25 years of age or younger who has been a resident of this state for a period of at least 12 months immediately prior to the date of registration in an approved school, who remains a citizen of the state while receiving funds under this subpart, and who is a child of a member of the Georgia National Guard as such term is defined in Code Section 38-2-3 who is killed or missing in action or totally and permanently disabled while on active duty in the service of the United States or of this state, and who was a resident of the State of Georgia at the time he or she was killed, reported as missing in action, or totally and permanently disabled. If such student is the adopted child of any such member of the Georgia National Guard, such student must have been adopted in a final order of adoption prior to the date that such member was killed, reported as missing in action, or totally and permanently disabled. (Code 1981, § 20-3-480, enacted by Ga. L. 1995, p. 961, § 9.)

**20-3-481. Grants to eligible students.**

(a) There is granted to each eligible student attending an approved school the sum of \$2,000.00 per academic year. No person shall be eligible to receive grant assistance provided under this subpart in excess of \$8,000.00. Grant assistance to eligible students under this subpart shall be payable during the period of a summer school quarter or semester. The payment of grants to eligible students under this subpart shall be contingent upon the appropriation of funds by the General Assembly for the purposes of this subpart in annual appropriations Acts of the General Assembly.

(b) Any person otherwise meeting the conditions of this subpart shall be eligible to receive a grant even though the accident or the event causing the death or missing in action status of such person's parent occurred prior to July 1, 1995. (Code 1981, § 20-3-481, enacted by Ga. L. 1995, p. 961, § 9.)

**20-3-482. Applying for grants; administration of program.**

(a) Any person meeting the conditions of this subpart may apply to the authority for a grant. Such application shall be submitted in writing on forms prescribed by the authority for such purpose. The applicant shall furnish such information as may be required by the authority for determination of eligibility for the grant. The authority shall approve grant renewals only upon receipt of the recipient's application therefor and upon a finding that the recipient has successfully completed the work of the preceding school period and presents evidence that he or she is a student in good standing, that he or she remains a citizen of this state, and that he or she remains otherwise qualified to receive such grant under this subpart.

(b) The authority is authorized to prescribe such rules and regulations as may be necessary or convenient for administration of this program and to establish procedures for determination of eligibility of applicants. The authority is also authorized to establish standards and procedures for verifying the death or missing in action status of the applicant's parent. (Code 1981, § 20-3-482, enacted by Ga. L. 1995, p. 961, § 9.)

**Subpart 10A**

Georgia HERO (Helping Educate Reservists and their Offspring)  
Scholarship

**20-3-485. Definitions.**

As used in this subpart, the term:



(1) “Approved school” means a school which is a unit of the University System of Georgia or a branch of the Technical College System of Georgia or a private independent nonprofit postsecondary institution eligible for HOPE Scholarships or grants in accordance with the provisions of Code Sections 20-3-519 through 20-3-519.12.

(2) “Eligible student” means a person who:

(A)(i) Is enrolled as a full-time or part-time student in an approved school;

(ii) Meets residency requirements to be classified as a legal resident of Georgia as established pursuant to regulations of the authority and who remains a citizen of the state while receiving funds under this subpart; and

(iii) Is a member of the Georgia National Guard as such term is defined in Code Section 38-2-3 or a member of a reserve component of the armed forces of the United States, which member has completed at least one qualifying term of service;

(B) Is a child:

(i) Whose parent was a member of the Georgia National Guard as such term is defined in Code Section 38-2-3 or a member of a reserve component of the armed forces of the United States, including a deceased member, which member completed at least one qualifying term of service;

(ii) Who was born prior to such qualifying term of service or within nine months of the beginning of such qualifying term of service; and

(iii) Is 25 years of age or younger who is enrolled as a full-time or part-time student in an approved school;

(C) Is a surviving spouse of a deceased member of the Georgia National Guard as such term is defined in Code Section 38-2-3 who was killed or sustained a 100 percent disability in a combat zone or as a result of injuries received in a combat zone, which member completed at least one qualifying term of service; or

(D) Is a surviving spouse of a deceased member of a reserve component of the armed forces of the United States who was killed or sustained a 100 percent disability in a combat zone or as a result of injuries received in a combat zone, which member completed at least one qualifying term of service.

(3) “Georgia HERO Scholarship” means a Georgia Helping Educate Reservists and their Offspring Scholarship grant as provided for in Code Section 20-3-486.

(4) "Parent" means the biological parent, adoptive parent, or legal guardian of a person 25 years of age or younger during the qualifying term of service.

(5) "Qualifying term of service" means deployment overseas for active service on or after February 1, 2003, to a location or locations outside of the United States and its territories designated by the United States Department of Defense as a combat zone for a cumulative period of at least 181 days or, in the case of an individual who is killed or receives a 100 percent disability as a result of injuries received in such combat zone, any period of time on active service in such combat zone; provided, however, that any person who fails to serve the full 181 consecutive days because he or she was evacuated from the combat zone due to severe injuries shall be deemed to have completed a qualifying term of service. (Code 1981, § 20-3-485, enacted by Ga. L. 2005, p. 1036, § 1/SB 43; Ga. L. 2006, p. 254, § 1/SB 415; Ga. L. 2007, p. 705, § 1/HB 131; Ga. L. 2008, p. 335, § 2/SB 435; Ga. L. 2008, p. 799, § 1/HB 311.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2005, "Code Section 20-3-486" was substituted for "Code Section 20-3-487" in paragraph (3).

Pursuant to Code Section 28-9-5, in 2008, "Georgia" was deleted preceding "Technical College" in paragraph (1).

**Editor's notes.** — Code Sections 20-3-519.7 through 20-3-519.9 and 20-3-519.12, referred to in paragraph (1) of this Code section, were repealed by Ga. L. 2011, p. 1, § 8/HB 326, effective March 15, 2011.

### **20-3-486. Grants to eligible students.**

(a) There is granted to each eligible student under subparagraph (A) of paragraph (2) of Code Section 20-3-485 attending an approved school a Georgia HERO Scholarship grant for a maximum of four award years in the sum of \$2,000.00 per award year. No person shall be eligible to receive grant assistance provided under this subsection in excess of \$8,000.00. Applications for grants under this subsection must be made before July 1, 2010, or within two years after the date the student becomes eligible, whichever is later, and grant eligibility shall terminate eight years after the date the student becomes eligible.

(b) There is granted to each eligible student under subparagraph (B) of paragraph (2) of Code Section 20-3-485 attending an approved school a Georgia HERO Scholarship grant in the sum of \$2,000.00 per award year. Such student shall be eligible for one award year for each period of 181 cumulative days that his or her parent was deployed overseas on active service on or after February 1, 2003, to a location or locations outside of the United States and its territories designated by the United States Department of Defense as a combat zone; provided, however, that a student whose parent was killed or received a 100 percent disability as a result of injuries received in such combat zone shall

receive up to a maximum of four award years regardless of the time such student's parent was on active service in such combat zone. No person shall be eligible to receive grant assistance provided under this subsection in excess of \$8,000.00. Applications for grants under this subsection must be made before July 1, 2010, or within two years after the student becomes eligible, whichever is later, and grant eligibility shall terminate eight years after the student becomes eligible.

(c) There is granted to each eligible student under subparagraph (C) or (D) of paragraph (2) of Code Section 20-3-485 attending an approved school a Georgia HERO Scholarship grant in the sum of \$2,000.00 per award year. Such student shall be eligible for four award years. No person shall be eligible to receive grant assistance provided under this subsection in excess of \$8,000.00. Applications for the initial grant under this subsection must be made before July 1, 2010, or not later than two years following the death of the spouse, whichever is later, and no grant shall be issued later than six years after the initial grant is issued.

(d) Grant assistance to eligible students under this subpart shall be payable on a pro rata basis based upon whether the student is enrolled full time or part time and the number of semesters or quarters of enrollment. The payment of grants to eligible students under this subpart shall be contingent upon the appropriation of funds by the General Assembly for the purposes of this subpart in annual appropriations Acts of the General Assembly. (Code 1981, § 20-3-486, enacted by Ga. L. 2005, p. 1036, § 1/SB 43; Ga. L. 2007, p. 705, § 2/HB 131; Ga. L. 2008, p. 799, § 2/HB 311.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2005, “Code Section 20-3-485” was substituted for “Code Section 20-3-486” in the first sentences of subsections (a) and (b).

### **20-3-487. Applying for grants; administration of program.**

(a) Any person meeting the conditions of this subpart may apply to the authority for a grant. Such application shall be submitted in writing on forms prescribed by the authority for such purpose. The applicant shall furnish such information as may be required by the authority for determination of eligibility for the grant. The authority shall approve grant renewals only upon receipt of the recipient's application therefor and upon a finding that the recipient has successfully completed the work of the preceding school period and presents evidence that he or she is a student in good standing at the approved school, that he or she remains a resident of this state, and that he or she remains otherwise qualified to receive such grant under this subpart.

(b) The authority is authorized to prescribe such rules and regulations as may be necessary or convenient for administration of this



program and to establish procedures for determination of eligibility of applicants. The authority is also authorized to establish standards and procedures for verifying the service of the applicant or the applicant's parent, as appropriate, in a combat zone for the requisite period of time. (Code 1981, § 20-3-487, enacted by Ga. L. 2005, p. 1036, § 1/SB 43.)

### Subpart 11

#### Grants for Students at North Georgia College

#### **20-3-490. Eligibility.**

As used in this subpart, the term "eligible student" means a person who has received from funds appropriated by the General Assembly a two-year Georgia Military College scholarship as provided for in Code Section 20-3-567 and has satisfactorily completed the two-year program for which such scholarship was granted. (Code 1981, § 20-3-490, enacted by Ga. L. 1998, p. 1656, § 1.)

#### **20-3-491. Applications for scholarship grants; administration of program.**

(a) Subject to appropriations by the General Assembly, the authority shall establish a program of two-year scholarship grants for eligible students attending North Georgia College and participating in a Reserve Officers' Training Corps program while so enrolled. Any person meeting the conditions of this subpart may apply to the authority for a grant. Such application shall be submitted in writing on forms prescribed by the authority for such purpose. The applicant shall furnish such information as may be required by the authority for determination of eligibility for the grant. The authority shall approve grant renewals only upon receipt of the recipient's application therefor and upon a finding that the recipient has successfully completed the work of the preceding school period and presents evidence that he or she is a student in good standing, that he or she remains a citizen of this state, and that he or she remains otherwise qualified to receive such grant under this subpart.

(b) The authority is authorized to prescribe such rules and regulations as may be necessary or convenient for administration of this program and to establish procedures for determination of eligibility of applicants. (Code 1981, § 20-3-491, enacted by Ga. L. 1998, p. 1656, § 1.)

#### **20-3-492. Appropriation of funds.**

(a) The funds necessary to provide for the program of scholarship grants provided for in this subpart shall come from funds appropriated

by the General Assembly. In the event funds available to the authority are not sufficient to enable the authority to pay on behalf of eligible students the full grant amount otherwise payable under this subpart, grants shall be reduced by the authority on a pro rata basis.

(b) Nothing in this subpart shall be construed to require the General Assembly to appropriate any such funds. (Code 1981, § 20-3-492, enacted by Ga. L. 1998, p. 1656, § 1.)

**20-3-493. Grant program shall be in addition to and not in lieu of Subpart 5A.**

The scholarship grant program under this subpart shall be in addition to and not in lieu of the program provided for in Subpart 5A of this part. (Code 1981, § 20-3-493, enacted by Ga. L. 1998, p. 1656, § 1.)

PART 4

MILITARY SCHOLARSHIPS

**Editor’s notes.** — Ga. L. 1981, p. 735, § 55, effective April 7, 1981, repealed the Code sections codified in this part. The former part consisted of Code Sections 20-3-480 through 20-3-489 and concerned military scholarships. In 1995, new Code Sections 20-3-480 through 20-3-482, concerning grants to children of Georgia National Guard members were enacted as a new Subpart 10 of Part 3 of Article 7 of this chapter.

PART 5

BOARD OF REGENTS SCHOLARSHIPS

**Editor’s notes.** — Ga. L. 1983, p. 496, § 2, effective July 1, 1983, repealed the Code section formerly codified at this part and enacted the current part. The former part consisted of Code Section 20-3-500 and was based on Ga. L. 1972, p. 1015, § 2206; Ga. L. 1982, p. 3, § 20; and Ga. L. 1983, p. 3, § 53.

**20-3-500. Board of regents authorized to grant scholarships.**

The board of regents shall have the authority to grant to qualified students, who are citizens and bona fide residents of the State of Georgia and who would not otherwise have available the funds necessary to obtain an education, such scholarships as are necessary for them to complete programs of study offered by institutions of the University System of Georgia, with the exception of the program leading to the degree of Doctor of Medicine. The terms and conditions thereof shall be prescribed and regulated by the board of regents but shall include the condition that recipients of such scholarships shall, upon the completion of their programs of study, reside in the State of Georgia and engage in activities for which they were prepared through

the scholarships for a period of one year for each \$1,000.00 received. (Code 1981, § 20-3-500, enacted by Ga. L. 1983, p. 496, § 2.)

**Cross references.** — Authorization of educational assistance programs, Ga. Const. 1983, Art. VIII, Sec. VII, Para. I.

### OPINIONS OF THE ATTORNEY GENERAL

**Condition for scholarships.** — Current statutory law relating to the board of regents scholarships requires that the award of such scholarships continue to be conditioned upon the current “service in Georgia” requirement. 1986 Op. Att’y Gen. No. 86-25.

### 20-3-501. Duties of board of regents regarding scholarship program.

It shall be the duty of the board of regents to receive and pass upon, allow, or disallow all applications for scholarships; to contract, increase, decrease, terminate, and otherwise regulate all grants for scholarships; and to manage, operate, and control all funds appropriated for this purpose. (Code 1981, § 20-3-501, enacted by Ga. L. 1983, p. 496, § 2.)

### 20-3-502. Funds for scholarships.

The funds necessary to provide for the program of scholarships authorized by this part shall come from funds appropriated or otherwise made available to the board of regents for such purposes. (Code 1981, § 20-3-502, enacted by Ga. L. 1983, p. 496, § 2.)

## PART 6

### MEDICAL SCHOLARSHIPS

**Editor’s notes.** — Ga. L. 1983, p. 951, § 1, effective July 1, 1983, repealed the Code section formerly codified at this part and enacted the current part. The former part consisted of Code Section 20-3-510 and was based on Ga. L. 1972, p. 1015, § 2205 and Ga. L. 1983, p. 3, § 53.

**Administrative rules and regulations.** — State Medical Education Board of Georgia, Official Compilation of the Rules and Regulations of the State of Georgia, Title 355.

### 20-3-510. “Board” defined.

As used in this part, the term “board” means the Georgia Board for Physician Workforce created by Code Section 49-10-1. (Code 1981, § 20-3-510, enacted by Ga. L. 1983, p. 951, § 1; Ga. L. 1984, p. 22, § 20; Ga. L. 2011, p. 459, § 1/HB 509.)



**The 2011 amendment**, effective July 1, 2011, rewrote this Code section, which related to the appointment and terms of members, meetings, quorum, and compensation and allowance of the State Medical Education Board.

**20-3-511. Transfer of powers, rights, and duties to the Georgia Board for Physician Workforce.**

(a) In addition to those powers, rights, and duties provided by Chapter 10 of Title 49, Chapter 34 of Title 31, and elsewhere by law, the board shall succeed to the powers, rights, and duties of the former State Medical Education Board as provided by this part.

(b) The rights and obligations of parties to contracts, leases, agreements, and other transactions entered into before July 1, 2011, by the former State Medical Education Board shall continue to exist; and none of such rights and obligations shall be impaired or diminished by reason of the transfer of the functions to the board. In all such instances, the board shall be substituted for the former State Medical Education Board, and the board shall succeed to the rights and obligations under such contracts, leases, agreements, and other transactions.

(c) The board shall succeed to all rules, regulations, policies, procedures, and administrative orders of the State Medical Education Board that were in effect on June 30, 2011, or scheduled to go into effect on or after July 1, 2011, and which relate to the functions transferred to the board pursuant to this part. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect unless and until amended, repealed, superseded, or nullified by the board by proper authority or as otherwise provided by law. (Code 1981, § 20-3-511, enacted by Ga. L. 1983, p. 951, § 1; Ga. L. 1984, p. 22, § 20; Ga. L. 1988, p. 545, § 1; Ga. L. 2000, p. 15, § 1; Ga. L. 2011, p. 459, § 1/HB 509.)

**The 2011 amendment**, effective July 1, 2011, rewrote this Code section, which read: “With the concurrence of the State Medical Education Board, the Department of Community Health shall employ and provide for the compensation of such administrative staff, including but not limited to an executive director, as is necessary to carry out the functions of the State Medical Education Board.”

**20-3-512. Powers as to medical student loans and scholarships.**

(a) It shall be the duty of the board to receive and pass upon, allow or disallow all applications for loans made to or scholarships given students who are bona fide citizens and residents of the State of Georgia and who desire to become doctors of medicine and who are acceptable for enrollment in an accredited four-year medical school in the United States which has received accreditation or provisional accreditation by the Liaison Committee on Medical Education of the American Medical Association or the Bureau of Professional Education of the American Osteopathic Association for a program in medical education designed to

qualify the graduate for licensure by the Georgia Composite Medical Board. The purpose of such loans shall be to enable such applicants to obtain a standard four-year medical education which will qualify them to become licensed to practice medicine in the State of Georgia. It shall be the duty of the board to make a careful and full investigation of the ability, character, and qualifications of each applicant and determine the applicant's fitness to become the recipient of such loan or scholarship, and for that purpose the board may propound such examination to each applicant which it deems proper. The board may also prescribe such rules and regulations as it deems necessary and proper to carry out the purpose and intention of this part. The investigation of the applicant shall include an investigation of the ability of the applicant, and of the parents of such applicant, to pay his or her own tuition at such medical school, and the board in granting such loans and scholarships shall give preference to qualified applicants who, and whose parents, are unable to pay the applicant's tuition at such a medical school.

(b) The board shall have authority to grant to each applicant deemed by the board to be qualified to receive the same a loan or scholarship on a one-year renewable basis for the purpose of acquiring a standard four-year medical education, upon such terms and conditions as in the judgment of the board may be necessary or desirable. The board is authorized to consider, among other criteria, the home area of the student and the likelihood, if determinable, that the student will practice medicine in an area of this state which may entitle the student to repay the loan through services rendered as provided in this part. (Code 1981, § 20-3-512, enacted by Ga. L. 1983, p. 951, § 1; Ga. L. 1984, p. 22, § 20; Ga. L. 2009, p. 859, § 2/HB 509; Ga. L. 2011, p. 459, § 1/HB 509.)

**The 2011 amendment**, effective July 1, 2011, substituted "board" for "State Medical Education Board" throughout this Code section; and substituted "The board" for "The said State Medical Education Board" in the fourth sentence of subsection (a).

### **20-3-513. Determination of amount by board; terms and conditions; repayment in services.**

Students whose applications are approved shall receive a loan or scholarship in an amount to be determined by the board to defray the tuition and other expenses of the applicant in an accredited four-year medical school in the United States which has received accreditation or provisional accreditation by the Liaison Committee on Medical Education of the American Medical Association or the Bureau of Professional Education of the American Osteopathic Association for a program in medical education designed to qualify the graduate for licensure by the Georgia Composite Medical Board. The loans and scholarships shall be



paid in such manner as the Georgia Board for Physician Workforce shall determine and may be prorated so as to pay to the medical college or school to which any applicant is admitted such funds as are required by that college or school with the balance being paid directly to the applicant; all of which shall be under such terms and conditions as may be provided under rules and regulations of the board. The loans or scholarships to be granted to each applicant shall be based upon the condition that the full amount of the loans or scholarships shall be repaid to the State of Georgia in services to be rendered by the applicant by practicing his or her profession in a board approved rural county in Georgia of 35,000 population or less according to the United States decennial census of 1990 or any future such census or at any hospital or facility operated by or under the jurisdiction of the Department of Community Health, the Department of Behavioral Health and Developmental Disabilities, the Department of Corrections, or the Department of Juvenile Justice. For each year of practicing his or her profession in such board approved location, the applicant shall receive credit for the amount of the scholarship received during any one year in medical school, with the interest due on such amount. (Code 1981, § 20-3-513, enacted by Ga. L. 1983, p. 951, § 1; Ga. L. 1984, p. 22, § 20; Ga. L. 1985, p. 283, § 1; Ga. L. 1985, p. 1122, § 1; Ga. L. 1996, p. 265, § 1; Ga. L. 1997, p. 1453, § 1; Ga. L. 1999, p. 402, § 2; Ga. L. 2008, p. 12, § 2-3/SB 433; Ga. L. 2009, p. 859, § 2/HB 509; Ga. L. 2010, p. 286, § 17/SB 244; Ga. L. 2011, p. 459, § 1/HB 509.)

**The 2010 amendment**, effective July 1, 2010, inserted “or the Department of Behavioral Health and Developmental Disabilities” in the next to the last sentence.

**The 2011 amendment**, effective July 1, 2011, substituted “board” for “State Medical Education Board” throughout this Code section; in the second sentence, substituted “Georgia Board for Physician Workforce” for “State Medical Education Board” near the beginning; and, in the next to last sentence, substituted “Depart-

ment of Community Health, the Department of Behavioral Health and Developmental Disabilities, the Department of Corrections, or the Department of Juvenile Justice” for “Department of Community Health or the Department of Behavioral Health and Developmental Disabilities or at any facility operated by or under the jurisdiction of the Department of Corrections or at any facility operated by or under the jurisdiction of the Department of Juvenile Justice”.

## **20-3-514. Contract provisions for loan or scholarship.**

(a) Each applicant before being granted a loan or scholarship shall enter into a contract with the State of Georgia agreeing to the terms and conditions upon which the loan or scholarship is granted, including such terms and provisions as will carry out the full purpose and intent of this part. The form of such contract shall be prepared and approved by the Attorney General, and each contract shall be signed by the chairperson of the board, countersigned by the executive director of the board, and shall be signed by the applicant. For the purposes of this



part the disabilities of minority of all applicants granted loans or scholarships pursuant to this part are removed, and the said applicants are declared to be of full lawful age for the purpose of entering into the contract provided for in this Code section; and such contract so executed by an applicant is declared to be a valid and binding contract the same as though the said applicant were of the full age of majority. The board is vested with full and complete authority to bring an action in its own name against any applicant for any balance due the board on any such contract.

(b) An applicant who has entered into a loan or scholarship contract with the board and who:

(1) Is dismissed for either academic or disciplinary reasons from the college or school of medicine he or she is attending; or

(2) Voluntarily terminates his or her training and education in that institution for any reason prior to completion of training

shall be immediately liable to the board for all sums advanced with interest at the minimum rate of 12 percent per annum from the date of each payment by the board and compounded annually to the date the scholarship or loan is paid in full. The board is authorized to increase annually said rate of interest due on loans granted to new recipients; provided, however, that the increased rate of interest shall not exceed by more than 2 percent the prime rate published by the Board of Governors of the Federal Reserve System and in effect at the time of the increase.

(c) An applicant who has entered into a loan or scholarship contract with the board and who breaches that contract by either failing to begin or failing to complete his or her service obligation under such loan or scholarship contract shall be immediately liable to the board for three times the total uncredited amount of all such scholarship or loan payments paid to the applicant, such uncredited sums to be prorated on a monthly basis respecting the applicant's actual service and total service obligation. The board may consent or agree to a lesser measure of damages for compelling reasons.

(d) The board shall have the authority to cancel the loan or scholarship contract of any applicant at any time for any cause deemed sufficient by the board, provided that such authority may not be arbitrarily or unreasonably exercised. Upon such cancellation by the board, the total uncredited amount of the scholarship paid to the applicant shall at once become due and payable to the board in cash with interest at the minimum rate of 12 percent per annum from the date of each payment by the board and compounded annually to the date the scholarship or loan is paid in full. The board is authorized to increase annually such rate of interest, subject to the limitations set

forth in subsection (b) of this Code section. (Code 1981, § 20-3-514, enacted by Ga. L. 1983, p. 951, § 1; Ga. L. 1984, p. 22, § 20; Ga. L. 1985, p. 1122, § 2; Ga. L. 1999, p. 402, § 3; Ga. L. 2011, p. 459, § 1/HB 509.)

**The 2011 amendment**, effective July 1, 2011, substituted “board” for “State Medical Education Board” throughout; in paragraph (b)(2) and in the first sentence of subsection (c), inserted “or her”; in subsection (a), in the first sentence, sub-

stituted “including” for “which contract shall include” in the first sentence, substituted “chairperson” for “chairman” in the second sentence, and added the semicolon in the third sentence; and inserted “or she” in paragraph (b)(1).

### JUDICIAL DECISIONS

**Treble damages mandatory.** — Trial court’s failure to award treble damages, upon finding that a student breached a scholarship contract with the State Medical Education Board by failing to fulfill the service obligation, was reversible error as the court was required under both the terms of the agreement and O.C.G.A. § 20-3-514(c) to award treble damages to the board. *State Med. Educ. Bd. v. Calabro*, 282 Ga. App. 893, 640 S.E.2d 580 (2006).

**Breach of contract.** — Treble damages arising from a student’s breach of a contract contained within a scholarship awarded by the State Medical Education Board were properly awarded as called for under O.C.G.A. § 20-3-514(c) and authorized by the contract; moreover, the fact that the board did not seek damages in a lesser amount for breach of the contract was not an abuse of the board’s discretion. *Calabro v. State Med. Educ. Bd.*, 283 Ga. App. 113, 640 S.E.2d 581 (2006).

### **20-3-515. Power of board as to arranging payment of tuition and fees for students granted loans or scholarships.**

It shall be the duty of the board to make inquiry of such four-year medical schools as it deems proper and make arrangements, within the limitations as to cost as provided for in Code Section 20-3-513, for the payment of tuition or matriculation fees of enrolled students granted loans or scholarships by the board. (Code 1981, § 20-3-515, enacted by Ga. L. 1983, p. 951, § 1; Ga. L. 1984, p. 22, § 20; Ga. L. 2011, p. 459, § 1/HB 509.)

**The 2011 amendment**, effective July 1, 2011, twice substituted “board” for “State Medical Education Board”.

### **20-3-516. Funds for loans or scholarships.**

The funds necessary for the loans or scholarships provided for by this part and to administer the terms of this part shall come from funds made available to the board from appropriations to the Department of Community Health for medical scholarships or other purposes. (Code 1981, § 20-3-516, enacted by Ga. L. 1983, p. 951, § 1; Ga. L. 1984, p. 22, § 20; Ga. L. 1999, p. 296, § 2; Ga. L. 2011, p. 459, § 1/HB 509.)

**The 2011 amendment**, effective July 1, 2011, in this Code section, substituted “board” for “State Medical Education Board” in the middle of the first sentence and deleted the last sentence, which read: “The State Medical Education Board shall

be assigned to the Department of Community Health for administrative purposes only, except that such department shall prepare and submit the budget for that board in concurrence with that board.”

### 20-3-517. Biennial report of board to General Assembly.

The board shall make a biennial report to the General Assembly of its activities, loans or scholarships granted, names of persons to whom granted and the institutions attended by those receiving the same, the location of the applicants who have received their education and become licensed to practice medicine within this state, and where they are practicing, and shall make a full report of all its expenditures for loans or scholarships and expenses incurred pursuant to this part. (Code 1981, § 20-3-517, enacted by Ga. L. 1983, p. 951, § 1; Ga. L. 1984, p. 22, § 20; Ga. L. 2011, p. 459, § 1/HB 509.)

**The 2011 amendment**, effective July 1, 2011, substituted “board” for “State Medical Education Board” near the beginning.

### 20-3-518. Legislative purpose.

It is the purpose and intent of this part to bring about an adequate supply of persons licensed to practice medicine in the more sparsely populated areas of the State of Georgia by increasing the number of medical students from Georgia in the various medical schools and inducing a sufficient number of the graduates from medical schools to return to Georgia and practice their profession, thus affording adequate medical care to the people of Georgia. (Code 1981, § 20-3-518, enacted by Ga. L. 1983, p. 951, § 1; Ga. L. 2011, p. 459, § 1/HB 509.)

**Editor’s notes.** — Ga. L. 2011, p. 459, § 1/HB 509, effective July 1, 2011, reenacted this Code section without change.

## PART 6A

### STATE VETERINARY EDUCATION

**Effective date.** — This part became effective July 1, 2011. assistance, Ga. Const. 1983, Art. VIII, Sec. VII.

**Cross references.** — Educational as-

### 20-3-518.1. Definitions.

As used in this part, the term:



(1) "Board" means the State Veterinary Education Board created under Code Section 20-3-518.2.

(2) "Commissioner" means the Commissioner of Agriculture.

(3) "Department" means the Department of Agriculture. (Code 1981, § 20-3-518.1, enacted by Ga. L. 2011, p. 333, § 2/HB 60.)

### **20-3-518.2. State Veterinary Education Board.**

(a) There shall be a State Veterinary Education Board which shall consist of:

(1) The Commissioner of Agriculture or his or her designee;

(2) The dean of the College of Veterinary Medicine of the University of Georgia or his or her designee;

(3) The dean of the College of Agricultural and Environmental Sciences of the University of Georgia or his or her designee;

(4) A person actively engaged in the production of livestock in this state, to be appointed by the Governor, who shall serve for a term of four years and until his or her successor is qualified and appointed. The term of the initial member appointed under this paragraph shall commence on July 1, 2011; and

(5) A person actively engaged in the private practice of veterinary medicine in this state, whose practice includes but is not necessarily limited to food animals, to be appointed by the State Board of Veterinary Medicine, who shall serve for a term of four years and until his or her successor is qualified and appointed. The term of the initial member appointed under this paragraph shall commence on July 1, 2011.

(b) Any vacancies on the board shall be filled in the same manner as the original appointment.

(c) The board shall elect annually a chairperson and a vice chairperson to serve in the absence or inability of the chairperson. The board shall meet at least once each year at such time and place as may be fixed by the board. Special meetings shall be held upon the call of the chairperson. Three members of the board shall constitute a quorum for the transaction of business. No official action shall be taken by the board except upon the affirmative vote of at least three members of the board.

(d) The board shall be attached to the Department of Agriculture for administrative purposes only, pursuant to Code Section 50-4-3. (Code 1981, § 20-3-518.2, enacted by Ga. L. 2011, p. 333, § 2/HB 60.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2011, “on July 1, 2011” was substituted for “on the effective date of this part” in paragraphs (a)(4) and (a)(5).

**20-3-518.3. Purchases of loans made for educational purposes to students who have completed a veterinary medical degree program.**

(a) The board may provide for the purchase of loans made to students who are residents of Georgia for educational purposes who have completed a program of study in the field of doctor of veterinary medicine or its equivalent and are authorized to practice veterinary medicine in this state, with services in the form of the practice of veterinary medicine while residing in this state to be rendered as consideration for such loan purchases.

(b) Only persons whose veterinary medicine practices in this state include food animal specialties shall be eligible for loan purchases under this part. (Code 1981, § 20-3-518.3, enacted by Ga. L. 2011, p. 333, § 2/HB 60.)

**20-3-518.4. Loan purchases granted to applicants based upon services rendered; limitations.**

(a)(1) Persons whose applications are approved and enter into a loan purchase agreement with the board shall receive a loan purchase in a total amount to be determined by the board, but not exceeding \$80,000.00 per person, as provided by Code Section 20-3-518.3. The loan purchases shall be paid in such manner as the board shall determine.

(2) The loan purchases to be granted to each applicant shall be based upon the condition that the consideration for such loan purchases shall be services to be rendered by the applicant after entering into a loan purchase agreement with the board by practicing his or her profession in a board approved rural county in Georgia with a population of 35,000 or less according to the United States decennial census of 2010 or any future such census.

(3) For time served after entering into a loan purchase agreement with the board in practicing his or her profession in such board approved location, the applicant shall receive a loan purchase at a rate equivalent to \$20,000.00 per 12 months of service; provided, however, that the total purchase amount shall not exceed the maximum specified in paragraph (1) of this subsection.

(b) The board shall not enter into new loan purchase agreements with more than five persons per year; provided, however, that the total

sum of loan purchases from state appropriations for which the board contractually obligates itself in any fiscal year shall not exceed the amount of funds for such loan purchase purposes specified in annual appropriations Acts. Funds in the loan purchase fund account that are not expended or contractually obligated by the board for loan purchases during any fiscal year shall lapse. (Code 1981, § 20-3-518.4, enacted by Ga. L. 2011, p. 333, § 2/HB 60.)

#### **20-3-518.5. Contract; cancellation.**

(a) Each applicant before being granted a loan purchase shall enter into a contract with the board agreeing to the terms and conditions upon which the loan purchase is granted, including such terms and provisions as will carry out the full purpose and intent of this part. The form of such contract shall be prepared and approved by the Attorney General, and each contract shall be signed by the chairperson of the board and by the applicant.

(b) The board shall have the authority to cancel the loan purchase contract of any applicant at any time for any cause deemed sufficient by the board, provided that such authority shall not be arbitrarily or unreasonably exercised. (Code 1981, § 20-3-518.5, enacted by Ga. L. 2011, p. 333, § 2/HB 60.)

#### **20-3-518.6. Funding.**

The funds necessary for the loan purchases provided for by this part and to administer the terms of this part shall come from funds made available to the board from appropriations for such purpose. There shall be no compensation to board members for attending meetings or travel in the performance of their official duties. (Code 1981, § 20-3-518.6, enacted by Ga. L. 2011, p. 333, § 2/HB 60.)

#### **20-3-518.7. Adoption of rules and regulations.**

The board shall adopt such rules and regulations as are reasonable and necessary to implement this part. (Code 1981, § 20-3-518.7, enacted by Ga. L. 2011, p. 333, § 2/HB 60.)

### **PART 7**

#### **HOPE SCHOLARSHIPS AND GRANTS**

**Editor's notes.** — Ga. L. 1998, p. 626, § 3, not codified by the General Assembly, provides: "All rules and regulations previously adopted by the Georgia Student Finance Commission which pertain to

HOPE grants, HOPE scholarships, HOPE GED vouchers, HOPE teacher's scholarships, and PROMISE teacher's scholarships are hereby ratified to the extent not inconsistent with this Act."



Ga. L. 1998, p. 626, § 4, not codified by the General Assembly, provided, in part, that this part is applicable to scholarships and grants for the academic year beginning with the fall quarter or semester of 1998.

**Law reviews.** — For article, “Education: Postsecondary Education,” see 28 Ga. St. U. L. Rev. 193 (2011).

### 20-3-519. Definitions.

As used in this part, the term:

(1) “Academic year” means a period of time, typically nine months, in which a full-time student is expected to complete the equivalent of at least two semesters’ or three quarters’ academic work.

(2) Reserved.

(3) Reserved.

(4) “Certificate” or “diploma” means a credential, other than a degree, indicating satisfactory completion of training in a program of study offered by an eligible postsecondary institution.

(5) “Dual credit enrollment” means enrollment by a student in a postsecondary course in which an agreement has been established between an eligible high school and an eligible postsecondary institution wherein the student earns Carnegie units of credit that count toward both high school graduation requirements and postsecondary coursework requirements.

(6) “Eligible high school” means a public or private secondary school which is:

(A) Located in Georgia and accredited as such by:

- (i) The Southern Association of Colleges and Schools;
- (ii) The Georgia Accrediting Commission;
- (iii) The Georgia Association of Christian Schools;
- (iv) The Association of Christian Schools International;
- (v) The Georgia Private School Accreditation Council; or
- (vi) The Southern Association of Independent Schools;

(B) Located in another state and accredited by one of the following regional agencies:

- (i) The Southern Association of Colleges and Schools;
- (ii) The New England Association of Schools and Colleges;
- (iii) The Middle States Association of Colleges and Schools;

- (iv) The North Central Association of Colleges and Schools;
- (v) The Northwestern Association of Schools and Colleges;
- (vi) The Western Association of Schools and Colleges;
- (vii) The Alabama Independent School Association; or
- (viii) The Southern Association of Independent Schools.

(7) “Eligible postsecondary institution” means a school which is:

- (A) A unit of the University System of Georgia;
- (B) A branch of the Technical College System of Georgia;

(C) A private independent nonprofit postsecondary institution eligible for tuition equalization grants in accordance with the provisions of subparagraph (A) of paragraph (2) of Code Section 20-3-411; or

(D) A private proprietary postsecondary institution eligible for tuition equalization grants in accordance with the provisions of subparagraph (B) of paragraph (2) of Code Section 20-3-411.

(8) “Eligible private postsecondary institution” means an eligible postsecondary institution which meets the criteria set out in subparagraph (C) or (D) of paragraph (7) of this Code section.

(9) “Eligible public postsecondary institution” means an eligible postsecondary institution which meets the criteria set out in subparagraph (A) or (B) of paragraph (7) of this Code section.

(9.1) “Factor rate” means the percentage amount established by the Georgia Student Finance Commission against which the previous year HOPE award amount is multiplied.

(9.2) “First professional degree program” means a nonundergraduate degree program that meets the requirements established by the program regulations promulgated by the Georgia Student Finance Commission which, at a minimum, shall include, but not be limited to, the following:

(A) Accepts students after the completion of the sophomore or junior year; and

(B) Results in the award of a nonundergraduate degree.

(10) “Freshman student” means a student at a postsecondary institution who has attempted less than 46 quarter hours or less than 31 semester hours.

(11) “Full-time student” means a matriculated student attending a postsecondary educational institution and enrolled for at least 12 semester hours or the equivalent in any given semester or quarter.

(12) "Grade point average" means the numbered grade average calculated using a 4.0 scale.

(12.1) "Half-time student" means a matriculated student attending a postsecondary educational institution and enrolled for six to 11 semester hours or the equivalent in any given semester or quarter.

(12.2) "HOPE award amount" means the amount of HOPE award to be made to an eligible student as follows:

(A) At an eligible public postsecondary institution, the HOPE award amount is equal to the HOPE award rate multiplied by the number of credit hours, up to a maximum of 15, in which an eligible student is enrolled per quarter or semester; provided, however, that the quarter award shall equal two-thirds of the semester award and that credit hours for remedial and developmental courses shall not be included for the HOPE scholarship; or

(B) At an eligible private postsecondary institution, the HOPE award amount is equal to HOPE tuition payment multiplied by the factor rate for full-time students and one-half of the HOPE tuition payment multiplied by the factor rate for half-time students. No awards shall be made to eligible students enrolled in five or fewer credit hours and credit hours for remedial and developmental courses shall not be included for the HOPE scholarship.

(13) "HOPE award rate" means the rate equal to the previous academic year HOPE tuition payment to the eligible public postsecondary institution multiplied by the factor rate divided by 15. Notwithstanding the foregoing, the Georgia Student Finance Commission may adjust the previous academic year HOPE tuition payment used to calculate the HOPE award rate to reflect changes in the mission or sector of an eligible public postsecondary institution that affects the tuition charged by that institution.

(13.1) "HOPE GED voucher" means a Helping Outstanding Pupils Educationally general educational development (GED) diploma voucher for postsecondary education awarded in accordance with Code Section 20-3-519.6.

(14) "HOPE grant" means a Helping Outstanding Pupils Educationally grant for education awarded in accordance with Code Section 20-3-519.5.

(15) "HOPE scholarship" means a Helping Outstanding Pupils Educationally scholarship for education awarded in accordance with Code Section 20-3-519.2.

(16) Reserved.

(16.1) "HOPE tuition payment" means, in the case of an eligible public postsecondary institution, the amount paid for tuition only



based on the standard undergraduate full-time tuition rate for 15 hours; and, in the case of an eligible private postsecondary institution, the amount paid for tuition based on the amount established by the General Assembly in an appropriations Act.

(17) “Junior student” means a student at a postsecondary institution who has attempted at least 91 quarter hours but less than 136 quarter hours or at least 61 semester hours but less than 91 semester hours.

(18) Reserved.

(19) “Matriculated status” means being recognized as a student in a defined program of study leading to a degree, diploma, or certificate at a postsecondary institution.

(19.1) “Part-time student” means a matriculated student attending a postsecondary educational institution and enrolled for less than 12 semester hours or the equivalent in any given semester or quarter and who has never been enrolled for 12 or more semester hours or the equivalent in any given semester or quarter.

(20) Reserved.

(21) “Quarter hours” includes each quarter hour attempted for credit toward a degree, certificate, or diploma, but shall not include hours attempted for remedial and developmental courses for purposes of the HOPE scholarship.

(21.1) “Remedial and developmental courses” means coursework required by the postsecondary institution or chosen by the student that does not count toward program requirements for college degrees in the case of the HOPE scholarship, or, diplomas or certificates in the case of the HOPE grant.

(22) “Semester hours” includes each semester hour attempted for credit toward a degree, certificate, or diploma, but shall not include hours attempted for remedial and developmental courses for purposes of the HOPE scholarship.

(23) “Senior student” means a student at a postsecondary institution who has attempted at least 136 quarter hours but less than 191 quarter hours or at least 91 semester hours but less than 128 semester hours.

(24) “Sophomore student” means a student at a postsecondary institution who has attempted at least 46 quarter hours but less than 91 quarter hours or at least 31 semester hours but less than 61 semester hours.

(25) “Title IV” means Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C.A. Section 1070, et seq.

(26) "Tuition" means the charges to a student for postsecondary academic instruction without regard to other fees such as technology, activity, athletic, health, or other similar fees.

(27) "Zell Miller Scholar" means a student that has met the applicable eligibility requirements to receive a HOPE scholarship in accordance with Code Section 20-3-519.2 and:

(A) As an incoming freshman:

(i) Having graduated from an eligible high school with a grade point average of at least 3.7 calculated in accordance with Code Section 20-2-157 and having received a score of at least 1,200 combined critical reading score and math score on a single administration of the SAT or an ACT composite scale score of at least 26;

(ii) Having graduated from an eligible high school as a valedictorian or salutatorian; or

(iii) Having completed a home study program meeting the requirements of subsection (c) of Code Section 20-2-690, having received a score of at least 1,200 combined critical reading score and math score on a single administration of the SAT or an ACT composite scale score of at least 26, and earning a cumulative grade point average of at least 3.3 at an eligible postsecondary institution at the end of the quarter or semester in which the student has attempted 45 quarter hours or 30 semester hours, provided that such student shall be eligible to receive a retroactive scholarship for such student's freshman year to be paid at the end of the freshman year; and

(B) As a sophomore, junior, senior, or first professional student who met the requirements of subparagraph (A) of this paragraph, having a cumulative grade point average of at least 3.3 at the checkpoints set forth in paragraph (1) of subsection (b) of Code Section 20-3-519.2. Notwithstanding the foregoing, a student that entered an eligible postsecondary institution as a freshman between July 1, 2007, and June 30, 2011, and met the requirements of subparagraph (A) of this paragraph may become a Zell Miller Scholar as a sophomore, junior, senior, or first professional student.

A student that loses eligibility to be a Zell Miller Scholar for any reason may regain eligibility one time if the student requalifies at one of the checkpoints set forth in paragraph (1) of subsection (b) of Code Section 20-3-519.2. (Code 1981, § 20-3-519, enacted by Ga. L. 1998, p. 626, § 2; Ga. L. 1999, p. 81, § 20; Ga. L. 2000, p. 776, § 1; Ga. L. 2000, p. 1628, § 1; Ga. L. 2001, p. 4, § 20; Ga. L. 2002, p. 1114, § 1; Ga. L. 2004, p. 922, §§ 2, 3; Ga. L. 2006, p. 1069, § 1/SB 561; Ga. L.

2008, p. 112, § 2/SB 480; Ga. L. 2008, p. 335, § 2/SB 435; Ga. L. 2008, p. 759, §§ 2, 4A/SB 492; Ga. L. 2009, p. 8, § 20/SB 46; Ga. L. 2011, p. 1, § 1/HB 326; Ga. L. 2012, p. 775, § 20/HB 942.)

**The 2011 amendment**, effective March 15, 2011, substituted “Reserved.” for the former provisions of paragraphs (2) and (3), which read: “(2) ‘Advanced degree’ means a master’s degree, specialist’s degree, or doctorate in education conferred by an approved postsecondary institution upon completion of a unified program of study at the graduate level.

“(3) ‘Approved teacher education program’ means a program offered by a public or private postsecondary institution which program has been approved by the Georgia Professional Standards Commission.”; deleted former paragraph (5), which read: “‘Critical shortage field’ means an area of study or an area of specialized expertise for which a shortage of qualified teachers or educators exists in Georgia, designated as such by the Georgia Student Finance Commission.”; redesignated former paragraph (5.1) as present paragraph (5); deleted former paragraph (6); redesignated former paragraph (6.1) as present paragraph (6); rewrote paragraph (6); substituted “subparagraph (B)” for “subparagraph (C)” in subparagraph (7)(D); added paragraph (9.1); redesignated former paragraph (9.1) as present paragraph (9.2); added paragraphs (12.2) and (13.1); substituted “Code Section 20-3-519.2” for “Code Sections 20-3-519.2 or 20-3-519.3” at the end of paragraph (14); substituted “Reserved.” for the former provisions of paragraph (15), which read: “‘HOPE teacher’s scholarship’ means a Helping Outstanding Pupils Educationally scholarship for education awarded in accordance with Code Section

20-3-519.8.”; added paragraph (16.1); substituted “Reserved.” for the former provisions of paragraph (18), which read: “‘Mandatory fees’ means fees approved by the Georgia Student Finance Commission that are charged by a postsecondary institution to every student enrolled in that institution, regardless of the student’s program of study.”; substituted “Reserved.” for the former provisions of paragraph (20), which read: “‘PROMISE teacher’s scholarship’ means a scholarship awarded in accordance with Code Section 20-3-519.7.”; in paragraphs (21) and (22), deleted “, whether remedial or” following “hour attempted”, and added “, but shall not include hours attempted for remedial and developmental courses for purposes of the HOPE scholarship” at the end; and added paragraphs (21.1), (26), and (27). See editor’s note for applicability.

**The 2012 amendment**, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, arranged the paragraphs in alphabetical order.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2008, “Georgia” was deleted following “A branch of the” in subparagraph (7)(B).

**Editor’s notes.** — Ga. L. 2011, p. 1, § 17/HB 326, not codified by the General Assembly, provides, in part, that the 2011 amendment shall be applicable to postsecondary students beginning in the fall of 2011.

**Law reviews.** — For article on the 2004 amendment and enactment of Code sections in this part, see 21 Ga. St. U. L. Rev. 107 (2004).

**20-3-519.1. Eligibility for scholarships or grants.**

(a) A student is eligible for any scholarship or grant described in this part if the student:

(1) Meets residency requirements by:

(A)(i) Being classified as a legal resident of Georgia as established by the program regulations promulgated by the Georgia Student Finance Commission which shall be based upon the



in-state tuition policy of the board of regents and the in-state tuition guidelines set by the Technical College System of Georgia; and

(ii)(I) If the student was classified as a legal resident of Georgia at the time of graduation from high school or from a home study program meeting the requirements of Code Section 20-2-690, then the student must have met the requirements set forth in division (i) of this subparagraph for a period of at least 12 months immediately prior to the first day of classes for which the scholarship or grant is to be awarded; or

(II) If the student was not classified as a legal resident at the time of graduation from high school or from a home study program meeting the requirements of Code Section 20-2-690, then the student must have met the requirements set forth in division (i) of this subparagraph for a period of at least 24 months immediately prior to the first day of classes for which the scholarship or grant is to be awarded; or

(B) Being classified as a legal resident of Georgia if such student is an active duty military service member or the spouse or dependent child of an active duty military service member and the active duty military service member is stationed in Georgia or lists Georgia as their home of record; and

(2) Meets all applicable requirements of this part relating to the relevant scholarship or grant and applicable to the student.

(b) A student is ineligible for any scholarship or grant described in this part if the student:

(1) Is not a United States citizen or a permanent resident alien who meets the definition of an eligible noncitizen under federal Title IV requirements;

(2) Has not complied with United States Selective Service System requirements for registration, if such requirements are applicable to the student;

(3) Is in default on a federal Title IV educational loan or a State of Georgia educational loan, provided that a student who is otherwise eligible and has fully repaid the defaulted loan will be eligible to obtain a scholarship or grant for future academic terms but not retroactively;

(4) Owes a refund on a federal Title IV student financial aid program or a Georgia student financial aid program, provided that a student who is otherwise eligible and has fully paid the refund owed will be eligible to obtain a scholarship or grant for future academic terms but not retroactively;

(5) Has been convicted of a felony offense involving marijuana, a controlled substance, or a dangerous drug as set out in Code Section 20-1-23 or 20-1-24 of the “Drug-free Postsecondary Education Act of 1990,” provided that such ineligibility extends from the date of conviction to the completion of the next academic term;

(6) Is incarcerated; or

(7) Does not meet each qualification listed in the Code section relating to the relevant scholarship or grant and applicable to the student. (Code 1981, § 20-3-519.1, enacted by Ga. L. 1998, p. 626, § 2; Ga. L. 1999, p. 81, § 20; Ga. L. 2000, p. 136, § 20; Ga. L. 2011, p. 1, § 2/HB 326; Ga. L. 2012, p. 775, § 20/HB 942.)

**The 2011 amendment,** effective March 15, 2011, added subsection (a); and designated the existing provisions as subsection (b). See editor’s note for applicability.

**The 2012 amendment,** effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted “;

and” for a period at the end of subparagraph (a)(1)(B).

**Editor’s notes.** — Ga. L. 2011, p. 1, § 17/HB 326, not codified by the General Assembly, provides, in part, that the 2011 amendment shall be applicable to postsecondary students beginning in the fall of 2011.

## OPINIONS OF THE ATTORNEY GENERAL

**Compliance with Fair and Open Grants Act in administering scholarships.** — It was not the intent of the General Assembly that the Georgia Student Finance Commission comply with

the Fair and Open Grants Act, O.C.G.A. § 28-5-120 et seq., in administering the HOPE Scholarship, Hope Grant, and other state scholarship and grant programs. 2002 Op. Att’y Gen. No. 2002-2.

### 20-3-519.2. Eligibility requirements for a HOPE scholarship.

(a) To be eligible for a HOPE scholarship, an entering freshman student seeking an associate or baccalaureate degree at an eligible postsecondary institution shall, in addition to meeting the residency requirements set forth in subsection (a) of Code Section 20-3-519.1:

(1) Meet achievement standards by:

(A) Having graduated from an eligible high school while meeting the curriculum requirements of his or her program of study in 1993 or thereafter and meeting the requirements set out in the applicable subsection and paragraph of Code Section 20-2-157;

(B) In the case of a student who is otherwise qualified but:

(i) Did not graduate from high school or complete a home study program meeting the requirements of subsection (c) of Code Section 20-2-690, having received the general educational development (GED) diploma awarded by the Department of Technical and Adult Education, now known as the Technical

College System of Georgia, after June 30, 1993, provided that such student shall only be eligible for a HOPE scholarship pursuant to subsection (c) of this Code section;

(ii) Completed a home study program meeting the requirements of subsection (c) of Code Section 20-2-690 in lieu of graduating from an eligible high school, earning a cumulative grade point average of at least 3.0 at an eligible postsecondary institution at the end of the quarter or semester in which the student has attempted 45 quarter hours or 30 semester hours, provided that such student shall be eligible to receive a retroactive HOPE scholarship for such student's freshman year to be paid at the end of the freshman year; or

(iii) Graduated from a high school which is not an eligible high school, earning a cumulative grade point average of at least 3.0 at an eligible postsecondary institution at the end of the quarter or semester in which the student has attempted 45 quarter hours or 30 semester hours, provided that such student shall be eligible to receive a retroactive HOPE scholarship for such student's freshman year to be paid at the end of the freshman year; or

(C) In the case of an otherwise qualified student who:

(i) Did not graduate from high school or complete a home study program meeting the requirements of subsection (c) of Code Section 20-2-690 but received the general educational development (GED) diploma awarded by the Department of Technical and Adult Education, now known as the Technical College System of Georgia, after June 30, 1993;

(ii) Completed a home study program meeting the requirements of subsection (c) of Code Section 20-2-690 in lieu of graduating from an eligible high school; or

(iii) Graduated from a high school which is not an eligible high school,

earning a score in the eighty-fifth percentile or higher nationally on a standardized college admission test, such as the SAT or ACT; and

(2) Meet enrollment standards by being admitted, enrolled, and classified as an undergraduate student in a matriculated status.

(b) To be eligible for a HOPE scholarship, a sophomore, junior, senior, or first professional student seeking an associate, baccalaureate, or first professional degree at an eligible postsecondary institution shall, in addition to meeting the residency requirements set forth in subsection (a) of Code Section 20-3-519.1:



(1) Meet achievement standards by meeting the following criteria:

(A) Earning a cumulative grade point average of at least 3.0 at a postsecondary institution:

(i) At the end of the quarter or semester in which the student has attempted 45, 90, or 135 quarter hours or 30, 60, or 90 semester hours if such student is a full-time student; or

(ii) At the end of three consecutive quarters or semesters if such student is a part-time student and has maintained part-time student status for three consecutive quarters or semesters; and

(B) Maintaining satisfactory academic progress in a course of study in accordance with the standards and practices used for federal Title IV programs by the postsecondary institution in which the student is enrolled; and

(2) Meet enrollment standards by being admitted, enrolled, and classified as an undergraduate or first professional student in a matriculated status.

(c)(1)(A) A full-time student who fails to maintain a cumulative grade point average of at least 3.0 at the end of the quarter or semester in which the student has attempted 45, 90, or 135 quarter hours or 30, 60, or 90 semester hours may attend the next 45 quarter or 30 semester hours without a HOPE scholarship.

(B) An otherwise eligible student who attains or regains a cumulative grade point average of at least 3.0 at the end of a quarter or semester in which the student has attempted 45, 90, or 135 quarter hours or 30, 60, or 90 semester hours may qualify or requalify for a HOPE scholarship; provided, however, that a student who receives a HOPE scholarship and loses eligibility pursuant to this subsection is only eligible to regain or requalify for the HOPE scholarship one time.

(2) In addition to other requirements, and regardless of quarter hours or semester hours of coursework attempted, a student who fails to possess a cumulative grade point average of at least 3.0 at the end of each spring quarter or semester or at the end of three consecutive quarters or semesters for a part-time student pursuant to paragraph (1) of subsection (b) of this Code section shall be ineligible for a HOPE scholarship until such time as the student regains or attains a cumulative grade point average of at least 3.0 at one of the 45, 90, or 135 quarter hour grade point average checkpoints or at one of the 30, 60, or 90 semester hour grade point average checkpoints, at which time the student will regain or attain eligibility if other terms and conditions in this Code section are also satisfied; provided, however,

that a student who receives a HOPE scholarship and loses eligibility pursuant to this subsection is only eligible to regain or requalify for the HOPE scholarship one time.

(d) A student may receive the HOPE scholarship until the first of these events:

(1) The student has earned a baccalaureate or first professional degree;

(2) The student has attempted at any postsecondary institution a total of 190 quarter hours or 127 semester hours; or

(3) Beginning with those students receiving a HOPE scholarship for the first time on or after July 1, 2011, seven years from a student's graduation from high school or the equivalent thereof as determined by the Georgia Student Finance Commission in its rules and regulations; provided, however, that for a student who serves in the military during such seven-year period, any such military service served as active duty shall not count against the seven-year period. A student that is ineligible to receive a HOPE scholarship pursuant to this paragraph but who received the HOPE scholarship during the 2010-2011 academic year shall continue to be eligible for the HOPE scholarship until June 30, 2015, as long as such student meets all other eligibility requirements, including, but not limited to, paragraphs (1) and (2) of this subsection.

(e) Subject to the amounts appropriated by the General Assembly and provisions relating to the Lottery for Education Account in Code Section 50-27-13, a HOPE scholarship awarded under this Code section shall be equal to the HOPE award amount.

(f) For each semester of eligibility, Zell Miller Scholars shall be awarded an amount in addition to the HOPE award amount as follows:

(1) If attending an eligible public institution, an amount equal to the difference between the HOPE award amount and the then current academic year standard undergraduate tuition amount at the institution to be paid; and

(2) If attending an eligible private institution, an amount equal to the difference between the HOPE award amount and the HOPE tuition payment. (Code 1981, § 20-3-519.2, enacted by Ga. L. 1998, p. 626, § 2; Ga. L. 2000, p. 618, § 77; Ga. L. 2001, p. 4, § 20; Ga. L. 2004, p. 922, § 4; Ga. L. 2006, p. 338, §§ 1, 2/SB 506; Ga. L. 2006, p. 1069, § 2/SB 561; Ga. L. 2008, p. 335, § 2/SB 435; Ga. L. 2008, p. 590, § 1/HB 152; Ga. L. 2008, p. 759, § 3/SB 492; Ga. L. 2009, p. 8, § 20/SB 46; Ga. L. 2009, p. 858, § 1/HB 484; Ga. L. 2011, p. 1, § 3/HB 326; Ga. L. 2012, p. 775, § 20/HB 942.)

**The 2011 amendment**, effective March 15, 2011, rewrote this Code section. See editor's note for applicability.

**The 2012 amendment**, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, in paragraph (d)(3), substituted "students receiving a HOPE scholarship for the first time" for "students receiving HOPE for the first time" near the beginning, and substituted "for a student who" for "for a student that" in the middle; and deleted the paragraph (e)(1) designation.

**Code Commission notes.** — Pursuant

to Code Section 28-9-5, in 2008, "Georgia" was deleted following "diploma awarded by the" in divisions (a)(2)(B)(i) and (a)(2)(C)(i).

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

Ga. L. 2011, p. 1, § 17/HB 326, not codified by the General Assembly, provides, in part, that the 2011 amendment shall be applicable to postsecondary students beginning in the fall of 2011.

### **20-3-519.3. Eligibility requirements for a HOPE scholarship at a private postsecondary institution; scholarship amount.**

Reserved. Repealed by Ga. L. 2011, p. 1, § 8/HB 326, effective March 15, 2011.

**Editor's notes.** — This Code section was based on Code 1981, § 20-3-519.3, enacted by Ga. L. 1998, p. 626, § 2; Ga. L. 1999, p. 81, § 20; Ga. L. 2001, p. 4, § 20; Ga. L. 2001, p. 148, § 18; Ga. L. 2004, p. 922, § 5; Ga. L. 2006, p. 1069, § 3/SB 561; Ga. L. 2007, p. 47, § 20/SB 103; Ga. L. 2008, p. 335, § 2/SB 435; Ga. L. 2008, p. 590, § 2/HB 152; Ga. L. 2008, p. 759, § 4/SB 492; Ga. L. 2009, p. 8, § 20/SB 46; Ga. L. 2009, p. 858, § 2/HB 484.

Ga. L. 2011, p. 1, § 17/HB 326, not codified by the General Assembly, provides, in part, that the 2011 repeal of this Code section shall be applicable to postsecondary students beginning in the fall of 2011.

**Law reviews.** — For article on the 2011 repeal of this Code section, see 28 Ga. St. U. L. Rev. 193 (2011).

### **20-3-519.4. Terms and conditions for receiving a HOPE grant at a private postsecondary institution.**

Reserved. Repealed by Ga. L. 2004, p. 922, § 6, effective July 1, 2004.

**Editor's notes.** — This Code section was based on Code 1981, § 20-3-519.4, enacted by Ga. L. 1998, p. 626, § 2.

### **20-3-519.5. Eligibility requirements for a HOPE grant.**

(a) To be eligible for a HOPE grant, a student seeking a diploma or certificate at a branch of the Technical College System of Georgia or a unit of the University System of Georgia shall, in addition to meeting the residency requirements set forth in subsection (a) of Code Section 20-3-519.1:

(1) Meet achievement standards by earning a cumulative grade point average of at least 3.0 at the end of the quarter or semester in



which the student has attended 30 or 60 semester hours or 45 or 90 quarter hours of courses towards a diploma or certificate for which the student received HOPE funds pursuant to this part. The grade point average shall be calculated using such 30 semester or 45 quarter hours taken pursuant to this subsection. An otherwise eligible student who attains or regains a cumulative grade point average of at least 3.0 at the end of a quarter or semester in which the student has attempted 30 or 60 semester hours or 45 or 90 quarter hours may qualify or requalify for a HOPE grant; provided, however, that a student who receives a HOPE grant and loses eligibility pursuant to this paragraph is only eligible to regain or requalify for the HOPE grant one time; and

(2) Meet enrollment standards by being admitted, enrolled, and classified as an undergraduate student in a matriculated status in a program of study leading to a certificate or diploma and maintaining satisfactory academic progress in accordance with the standards and practices used for federal Title IV programs by the institution at which the student is enrolled.

(b) There is no minimum number of hours of enrollment required for eligibility for a HOPE grant under this Code section.

(c) Subject to the provisions of subsection (e) of this Code section, an eligible student may receive HOPE grants for all course work required by the institution for programs of study leading to a certificate or diploma, including remedial and developmental courses.

(d) Subject to the amounts appropriated by the General Assembly and provisions relating to the Lottery for Education Account in Code Section 50-27-13, a HOPE grant awarded under this Code section shall equal the HOPE award amount.

(e) No student that has a baccalaureate degree, its equivalent or higher, from any postsecondary institution shall be eligible to receive a HOPE grant. No student may receive HOPE grants for more than 95 quarter hours or 63 semester hours of attempted coursework. No student may receive more than a cumulative total of 190 quarter hours or 127 semester hours of combined HOPE scholarships and grants. For purposes of this subsection, attempted hours shall not include hours for courses taken and paid for by a HOPE grant while a student is participating in dual credit enrollment with both an eligible high school and a branch of the Technical College System of Georgia or a unit of the University System of Georgia. The Technical College System of Georgia or the University System of Georgia, as applicable, shall verify that the student is enrolled in an eligible high school and shall notify the Georgia Student Finance Commission of the student's participation in dual credit enrollment. (Code 1981, § 20-3-519.5, enacted by Ga. L.

1998, p. 626, § 2; Ga. L. 2000, p. 618, § 78; Ga. L. 2004, p. 922, § 7; Ga. L. 2008, p. 335, § 2/SB 435; Ga. L. 2008, p. 759, § 4B/SB 492; Ga. L. 2009, p. 858, § 3/HB 484; Ga. L. 2011, p. 1, § 4/HB 326.)

**The 2011 amendment,** effective March 15, 2011, in subsection (a), added “, in addition to meeting the residency requirements set forth in subsection (a) of Code Section 20-3-519.1” prior to paragraph (a)(1); substituted the present provisions of paragraph (a)(1) for the former provisions, which read: “Meet residency requirements by meeting the requirements to be classified as a legal resident of Georgia as established by the program promulgated by the Georgia Student Finance Commission which shall be based upon the in-state tuition policy of the board of regents and the in-state tuition guidelines set by the Technical College System of Georgia; and”; substituted “and developmental courses” for “or developmental studies” at the end of subsection (c); in subsection (d), deleted the paragraph (1) designation, substituted “equal the HOPE award amount” for “include tuition, approved mandatory fees, and a book allowance not to exceed \$100.00 per quarter or \$150.00 per semester, except as otherwise provided for in paragraph (2) of this subsection”; deleted paragraph (d)(2), which read: “Effective beginning with the fall quarter or semester commencing after July 1, 2004, the amount of mandatory fees paid shall be equal to such amount or amounts that were paid on January 1, 2004, except as otherwise provided for in Code Section 50-27-13.”; in subsection (e),

added the first sentence, deleted “, except as provided for in subsection (f) of this Code section” following “coursework” at the end of the second sentence, and deleted “, unless in accordance with Code Sections 20-3-519.2 and 20-3-519.3” following “grants” at the end of the third sentence; and deleted subsections (f) and (g), relating to eligibility requirements of a student enrolled in diploma program receiving a HOPE grant and a dependent child of military personnel meeting residency requirements. See editor’s note for applicability.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2008, in the introductory language of subsection (a), “Georgia” was deleted following “a branch of the”, and in subsection (e), “Technical College System of Georgia” was substituted for “Department of Technical and Adult Education” in the third and fourth sentences (now fourth and fifth sentences).

**Editor’s notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

Ga. L. 2011, p. 1, § 17/HB 326, not codified by the General Assembly, provides, in part, that the 2011 amendment shall be applicable to postsecondary students beginning in the fall of 2011.

## 20-3-519.6. HOPE GED vouchers.

Subject to the amounts appropriated by the General Assembly and provisions relating to the shortfall reserve in Code Section 50-27-13, a HOPE GED voucher in the amount of \$500.00 shall be available once to each student receiving a general educational development (GED) diploma awarded by the Department of Technical and Adult Education, now known as the Technical College System of Georgia, after June 30, 1993. Such voucher shall be issued to such student upon enrollment in any eligible postsecondary institution in Georgia within 24 months from the date the general educational development (GED) diploma was awarded to the student and may only be used to cover postsecondary costs of attendance at such institution. (Code 1981, § 20-3-519.6,



enacted by Ga. L. 1998, p. 626, § 2; Ga. L. 2001, p. 4, § 20; Ga. L. 2008, p. 335, § 2/SB 435; Ga. L. 2009, p. 8, § 20/SB 46; Ga. L. 2010, p. 398, § 1/SB 341; Ga. L. 2011, p. 1, § 5/HB 326.)

**The 2010 amendment**, effective May 24, 2010, added subsections (a) and (b) and redesignated former subsections (a) and (b) as present subsections (c) and (d), respectively.

**The 2011 amendment**, effective March 15, 2011, substituted the present provisions of this Code section for the former provisions, which read: “(a) To be eligible for a HOPE GED voucher, a student attending an eligible public postsecondary institution shall meet residency requirements by meeting the requirements to be classified as a legal resident of Georgia as established by the program regulations promulgated by the Georgia Student Finance Commission which shall be based upon the in-state tuition policy of the board of regents and the in-state tuition guidelines set by the Technical College System of Georgia.

“(b) To be eligible for a HOPE GED voucher, a student attending an eligible private postsecondary institution shall meet residency requirements by meeting the requirements to be classified as a legal resident of Georgia as established by the

program regulations promulgated by the Georgia Student Finance Commission.

“(c) Subject to the amounts appropriated by the General Assembly and provisions relating to the scholarship shortfall reserve subaccount in Code Section 50-27-13, a HOPE GED voucher in the amount of \$500.00 shall be awarded once to each student receiving a general educational development (GED) diploma awarded by the Department of Technical and Adult Education, now known as the Technical College System of Georgia, after June 30, 1993, shall be valid at any eligible postsecondary institution in Georgia for 24 months from the date of issuance.

“(d) An otherwise eligible student receiving a HOPE GED voucher under this Code section is eligible for a HOPE scholarship as a sophomore, junior, or senior student.” See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2011, p. 1, § 17/HB 326, not codified by the General Assembly, provides, in part, that the 2011 amendment shall be applicable to postsecondary students beginning in the fall of 2011.

## 20-3-519.7 through 20-3-519.9.

Reserved. Repealed by Ga. L. 2011, p. 1, § 8/HB 326, effective March 15, 2011.

**Editor’s notes.** — These Code sections, relating to the PROMISE teacher’s scholarship, the HOPE teacher’s scholarship, and ineligibility for a HOPE teacher’s scholarship, were based on Code 1981, §§ 20-3-519.7 through 20-3-519.9, enacted by Ga. L. 1998, p. 626, § 2; Ga. L. 1999, p. 81, § 20; Ga. L. 2000, p. 618, § 79; Ga. L. 2000, p. 1489, § 1; Ga. L. 2001, p. 148, § 19.

Ga. L. 2011, p. 1, § 17/HB 326, not codified by the General Assembly, provides, in part, that the 2011 repeal of these Code sections shall be applicable to postsecondary students beginning in the fall of 2011.

**Law reviews.** — For article on the 2011 repeal of this Code section, see 28 Ga. St. U. L. Rev. 193 (2011).

## 20-3-519.10. Application of HOPE scholarship and HOPE grant.

A HOPE scholarship and a HOPE grant may be applied to any portion of a student’s tuition. In no case shall a HOPE scholarship or HOPE grant exceed a student’s tuition. (Code 1981, § 20-3-519.10,



enacted by Ga. L. 1998, p. 626, § 2; Ga. L. 2000, p. 618, § 80; Ga. L. 2011, p. 1, § 6/HB 326.)

**The 2011 amendment,** effective March 15, 2011, substituted “to any portion of a student’s tuition” for “only to tuition, mandatory fees, and book costs” at the end of the first sentence and added the second sentence. See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly,

provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

Ga. L. 2011, p. 1, § 17/HB 326, not codified by the General Assembly, provides, in part, that the 2011 amendment shall be applicable to postsecondary students beginning in the fall of 2011.

**20-3-519.11. Georgia Student Finance Commission; examination of institutions; rules and regulations; appropriation of funds.**

(a) The Georgia Student Finance Commission is authorized to promulgate rules and regulations not inconsistent with the provisions of this part relating to grants and scholarships described in this part. The Georgia Student Finance Commission is authorized to promulgate rules and regulations related to grants, loans, and scholarships no longer in effect as of March 15, 2011, under this part but for which the Georgia Student Finance Commission or the Georgia Student Finance Authority and the student were previously obligated.

(b) Every eligible postsecondary institution shall be subject to examination by the Georgia Student Finance Commission for the sole purpose of determining whether such postsecondary institution has properly complied with rules and regulations established pursuant to this Code section. Such examination shall be conducted by the Georgia Student Finance Commission no less frequently than once every three years. The Georgia Student Finance Commission is authorized to conduct the examination using sampling and extrapolation techniques. However, nothing in this subsection shall be construed to interfere with the authority of the postsecondary institution to determine its own curriculum, philosophy, purpose, or administration. In the event it is determined that a postsecondary institution knowingly or through error certified an ineligible student to be eligible for a scholarship or grant under this part, the amount of such scholarship or grant paid to the postsecondary institution pursuant to such certification shall be refunded by the postsecondary institution to the Georgia Student Finance Commission. The Georgia Student Finance Commission may suspend a postsecondary institution from receiving HOPE scholarship or HOPE grant award payments if it fails to refund any moneys deemed due pursuant to this subsection. The Georgia Student Finance Commission shall be authorized to promulgate rules and regulations necessary to carry out the intent of this subsection.

(c) Any person who knowingly makes or furnishes any false statement or misrepresentation, or who accepts such statement or misrepresentation knowing it to be false, for the purpose of enabling an ineligible student to obtain wrongfully a scholarship or grant under this part shall be guilty of a misdemeanor.

(d) Notwithstanding any provision of this part, the Georgia Student Finance Commission is authorized to promulgate rules and regulations restricting eligibility for the scholarships and grants described in this part or reducing the dollar amount of scholarships and grants described in this part in accordance with the provisions of Code Section 50-27-13. In addition to other remedies available at law and equity, the Georgia Student Finance Commission is authorized to enter into repayment agreements with students that owe refunds to the Georgia Student Finance Commission of any scholarship or grant described in this part. Except as prohibited by federal or other state laws, individuals that owe refunds and fail to enter into repayment agreements with the Georgia Student Finance Commission are, without judicial action, subject to garnishment of their pay, loss of a professional license, offset of lottery winnings, and offset of a state tax refund in accordance with rules and regulations promulgated by the Georgia Student Finance Commission not inconsistent with the provisions of this part. As used in this subsection, the term “refund” shall mean scholarship and grant amounts paid to or on behalf of students subsequently, in accordance with rules and regulations promulgated by the Georgia Student Finance Commission, determined to be ineligible to receive such funds.

(e) The funding for the scholarships and grants described in this part shall be subject to annual appropriations enacted by the General Assembly which shall establish the total amount of funding for such scholarships and grants. (Code 1981, § 20-3-519.11, enacted by Ga. L. 1998, p. 626, § 2; Ga. L. 2005, p. 1134, § 5/HB 298; Ga. L. 2011, p. 1, § 7/HB 326; Ga. L. 2012, p. 775, § 20/HB 942.)

**The 2011 amendment,** effective March 15, 2011, added the second sentence in subsection (a); added subsections (b) and (c); and redesignated former subsections (b) and (c) as present subsections (d) and (e), respectively. See editor’s note for applicability.

**The 2012 amendment,** effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted “moneys” for “monies” in subsection (b).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2011, “as of March 15, 2011,” was substituted for “as of the effective date of this Act,” in the second sentence of subsection (a).

**Editor’s notes.** — Ga. L. 2011, p. 1, § 17/HB 326, not codified by the General Assembly, provides, in part, that the 2011 amendment shall be applicable to postsecondary students beginning in the fall of 2011.

### 20-3-519.12 and 20-3-519.13.

Reserved. Repealed by Ga. L. 2011, p. 1, § 8/HB 326, effective March 15, 2011.

**Editor's notes.** — These Code sections, relating to eligibility for the PROMISE II teacher's scholarship and the HOPE Scholarship/Pre-K Legislative Oversight Committee, were based on Code 1981, §§ 20-3-519.12 and 20-3-519.13, enacted by Ga. L. 2000, p. 618, § 81; Ga. L. 2001, p. 148, § 20; Ga. L. 2004, p. 922, § 8; Ga. L. 2009, p. 8, § 20/SB 46; Ga. L. 2009, p. 303, § 6/HB 117.

Ga. L. 2011, p. 1, § 17/HB 326, not codified by the General Assembly, provides, in part, that the 2011 repeal of these Code sections shall be applicable to postsecondary students beginning in the fall of 2011.

**Law reviews.** — For article on the 2011 repeal of this Code section, see 28 Ga. St. U. L. Rev. 193 (2011).

### **20-3-519.14. Classification of employees of Free Trade Area of the Americas Georgia residents.**

Any residency requirements established pursuant to this part shall provide, at a minimum, that full-time Georgia employees of Free Trade Area of the Americas (FTAA) based in Georgia that are recognized by the United States Department of State, and their spouses and dependents, shall be classified as residents of Georgia. (Code 1981, § 20-3-519.14, enacted by Ga. L. 2004, p. 922, § 9.)

## **ARTICLE 8**

### **EUGENE TALMADGE MEMORIAL HOSPITAL**

### **20-3-520. Construction and operation authorized; separate appropriations.**

The board of regents in the exercise of its public and governmental functions shall have power and is authorized to lease, buy, build, construct, establish, contract for the use of, maintain, and operate a general nonprofit teaching hospital at Augusta, Georgia, known as the Eugene Talmadge Memorial Hospital, to be operated in conjunction with the Georgia Health Sciences University for the benefit of indigent, near indigent, and paying patients, under such rules and regulations as to administration, maintenance, charges for services, and general operations as may be prescribed by the board not in conflict with general laws of this state pertaining to fiscal operations of departments and agencies of the state. The General Assembly may, as a part of the general appropriations Act, make specific appropriations for the operation and maintenance of the hospital and any annex or addition thereto independent of and in addition to any appropriation made for the university system or any of its divisions. (Ga. L. 1945, p. 453, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 117, § 1; Ga. L. 2011, p. 752, § 20/HB 142.)

**The 2011 amendment,** effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted

“Georgia Health Sciences University” for “Medical College of Georgia” in the middle of the first sentence.



**Cross references.** — Construction and regulation of hospitals generally, T. 31, C. 7.

**Law reviews.** — For article, "Privati-

zation of Rural Public Hospitals: Implications for Access and Indigent Care," see 47 Mercer L. Rev. 991 (1996).

### OPINIONS OF THE ATTORNEY GENERAL

**Hospital does not have the authority to retain mental patients** who enter the hospital voluntarily, even though it is

unsafe to release such patients. 1954-56 Op. Att'y Gen. p. 565.

### 20-3-521. Funds for construction and equipping.

The board of regents is authorized to use funds from the building trust fund for the construction and equipping of the hospital or annex thereto, or both, authorized in Code Section 20-3-520 and any other money that it may be able to procure from any source. (Ga. L. 1945, p. 453, § 2; Ga. L. 1953, Nov.-Dec. Sess., p. 117, § 2.)

## ARTICLE 9

### GEORGIA MILITARY COLLEGE

**Editor's notes.** — Ga. L. 1990, p. 579, § 1, effective July 1, 1990, repealed the Code section formerly codified at this article and enacted the current article. The former article consisted of Code Section 20-3-540 and was based on Ga. L. 1981, Ex. Sess., p. 8 (Code enactment Act), and Ga. L. 1939, p. 410, § 1.

By resolution (Ga. L. 2009, p. 627), the General Assembly urged the Board of Trustees and the president of Georgia Military College to maintain the current military program at Georgia Military College and designated the college as the State of Georgia's Military Junior College.

## PART 1

### IN GENERAL

### 20-3-540. Definitions.

As used in this article, the term:

(1) "Board of trustees" or "board" means the Board of Trustees of the Georgia Military College.

(2) "College" means the Georgia Military College. (Code 1981, § 20-3-540, enacted by Ga. L. 1990, p. 579, § 1.)

### 20-3-541. Creation of board of trustees.

There is created a public authority, a body corporate and politic, to be known as the Board of Trustees of the Georgia Military College, which

shall be deemed an instrumentality of this state and a public corporation. (Code 1981, § 20-3-541, enacted by Ga. L. 1990, p. 579, § 1.)

#### **20-3-542. Composition of board.**

The board shall be composed of the mayor of the City of Milledgeville and six additional members, one of which shall be elected from each of the six municipal voting districts of the City of Milledgeville, all as provided in the consent decree entered May 12, 1989, in Civil Action No. 88-262-1-MAC, United States District Court, Middle District of Georgia, Macon Division, entitled *Louise N. Barnes v. James E. Baugh et al.* Each member of the board now serving shall continue to serve until his or her successor is duly elected and qualified. (Code 1981, § 20-3-542, enacted by Ga. L. 1990, p. 579, § 1; Ga. L. 1992, p. 2098, § 1; Ga. L. 1996, p. 296, § 1.)

#### **20-3-543. Terms of board members.**

The terms of the members of the board now serving, the terms of all future members, and the election of all future members shall be governed by the consent decree referenced in Code Section 20-3-542. (Code 1981, § 20-3-543, enacted by Ga. L. 1990, p. 579, § 1; Ga. L. 1992, p. 2098, § 2; Ga. L. 1996, p. 296, § 2.)

#### **20-3-544. Board chairman.**

The board shall elect one of its members as chairman who shall serve for a two-year term. (Code 1981, § 20-3-544, enacted by Ga. L. 1990, p. 579, § 1.)

#### **20-3-545. Compensation of board members.**

Members of the board of trustees shall receive the sum provided by Code Section 45-7-21 for each day of actual attendance at meetings of the board or for each day of travel, within or outside the state, as a member of a committee of the board, which travel has been authorized by the chairman or by action of the board, plus reimbursement for actual transportation costs while traveling by public carrier or the legal mileage rate for the use of a personal automobile to and from the place of meeting or places of visits or inspections. No member shall be authorized to receive the sums, expenses, and costs provided by this Code section for more than 60 days per year. Such sums, expenses, and costs shall be paid from funds appropriated to or otherwise available to the board. (Code 1981, § 20-3-545, enacted by Ga. L. 1990, p. 579, § 1.)

#### **20-3-546. Powers of board.**

The board of trustees shall have the authority:

(1) To make such reasonable rules and regulations as are necessary for the performance of its duties;

(2) To elect or appoint professors, educators, stewards, or any other officers necessary for the Georgia Military College; to discontinue or remove them as the good of the college may require; and to fix their compensations;

(3) To determine the policy and shape the conduct of the college;

(4) To receive donations, bequests, and contributions to the college;

(5) To sign, execute, and deliver in the name of the college all bonds that may be required of the college or its officers or trustees;

(6) To execute and deliver in the name of the college all contracts that may be needed or necessary;

(7) To borrow money, execute and deliver the note of the college, and to secure the same;

(8) To make purchases;

(9) To erect buildings and equip them on lands belonging to the college, on land loaned or leased to the college, and on lands of the state heretofore or hereafter granted to or set apart for use of the college;

(10) To administer scholarships, loans, and financial assistance programs as may become available; and

(11) To exercise any power usually granted to such board, necessary to its usefulness, not inconsistent with the Constitution and laws of this state. (Code 1981, § 20-3-546, enacted by Ga. L. 1990, p. 579, § 1.)

#### OPINIONS OF THE ATTORNEY GENERAL

**Pledge of real property not authorized.** — Board of trustees of the Georgia Military College cannot pledge as security the real property to which the board holds title. 1997 Op. Att’y Gen. No. 97-9.

**Georgia Military College is not a “local school system”** and is ineligible to be a member of a regional educational service agency. 1997 Op. Att’y Gen. No. U97-30.

#### 20-3-547. Fiscal year.

The fiscal year of the board of trustees and of the Georgia Military College is from July 1 in each year through June 30 in the following year. (Code 1981, § 20-3-547, enacted by Ga. L. 1990, p. 579, § 1.)



**20-3-548. Annual report.**

The board of trustees shall submit to the Governor annual reports of its transactions, together with such information as is necessary to show the condition of the Georgia Military College and with such suggestions as it may deem conducive to the good of the college. (Code 1981, § 20-3-548, enacted by Ga. L. 1990, p. 579, § 1.)

**PART 2****FUNDING; DONATIONS; PROPERTY; SCHOLARSHIPS****20-3-560. Legislative intent.**

It is the intention of the General Assembly that the Georgia Military College be a state-wide institution dedicated to providing a high-quality military education to the youth of this state, but not beyond the level of the second year of postsecondary study; provided, however, that the level of such educational programs shall be subject to the availability of funds appropriated by the General Assembly. The student enrollment of the college shall reflect as closely as possible the racial and demographic makeup of the state. (Code 1981, § 20-3-560, enacted by Ga. L. 1990, p. 579, § 1.)

**20-3-561. Management vested in the board of trustees.**

The government, control, and management of the Georgia Military College shall be vested in the Board of Trustees of the Georgia Military College. The Georgia Military College shall receive any designated funds appropriated by the General Assembly through the Board of Regents of the University System of Georgia or the Technical College System of Georgia. In the budgeting and expenditure of such designated funds, the Board of Trustees of the Georgia Military College shall provide annually to the Board of Regents of the University System of Georgia or the Technical College System of Georgia copies of budgetary requests submitted by the Georgia Military College to the Office of Planning and Budget and copies of audit reports concerning the expenditure of such funds. Nothing in this Code section shall be construed to diminish the authority of the elected Board of Trustees of the Georgia Military College over budgetary management and expenditure of such designated funds in compliance with other provisions of state law. (Code 1981, § 20-3-561, enacted by Ga. L. 1990, p. 579, § 1; Ga. L. 2000, p. 1256, § 1; Ga. L. 2008, p. 335, § 2/SB 435.)

## OPINIONS OF THE ATTORNEY GENERAL

**Georgia Military College is not a** service agency. 1997 Op. Att'y Gen. No. U97-30.  
**"local school system"** and is ineligible to  
 be a member of a regional educational

### **20-3-562. Validity of prior trust provisions; substitution of trustee.**

Any trust fund or property, real, personal, or mixed, that may have been created prior to July 1, 1996, by will or otherwise, as a fund, gift, donation, or devise to any prior board of trustees of the college or to any executor or trustee to and for the benefit, use, or behoof of the college shall not lapse by virtue of any of the provisions of this article, but such trust shall remain valid and of full force and effect; and the beneficial interest under any such deed of gift, will, or other conveyance shall vest in the board of trustees as trustee to and for the use, benefit, and behoof of the college. In any case where provisions of any deed of gift, will, or other conveyance referred to in this Code section require a trustee and no trustee shall in any contingency exist, the board shall be and become a substituted trustee to carry out the beneficial purposes of such gift, devise, or conveyance. (Code 1981, § 20-3-562, enacted by Ga. L. 1990, p. 579, § 1; Ga. L. 1996, p. 296, § 3.)

**Code Commission notes.** — Pursuant was added following "will" in the last to Code Section 28-9-5, in 1991, a comma sentence of this Code section.

### **20-3-563. Title to property vested in board of trustees.**

Title to all real, personal, and mixed property of whatever nature of the Georgia Military College is vested in the board of trustees, to be held by the board in trust for the benefit and use of the college. (Code 1981, § 20-3-563, enacted by Ga. L. 1990, p. 579, § 1.)

### **20-3-564. Authorization to dispose of property.**

All properties owned or held by the board of trustees pursuant to this article which have been declared to be the public property of the state may be sold, leased, or otherwise disposed of by the board, whenever the board may deem such sale, lease, or other disposition in the best interest of the college, if the board shall first determine that such property can no longer be advantageously used by the college; provided, however, that where any such property has been granted or conveyed to the college or the board for specified uses, such property shall only be sold, leased, conveyed, or otherwise disposed of for similar uses or purposes, which shall be in conformity with any use or trust declared in any such grant or conveyance; provided, further, that every such sale, lease, or other disposition of real property shall be subject to the

approval of the Governor. (Code 1981, § 20-3-564, enacted by Ga. L. 1990, p. 579, § 1; Ga. L. 1996, p. 296, § 4.)

**20-3-565. Execution and delivery of evidence of title upon disposition of property.**

In case of any sale, lease, or disposition of property under Code Section 20-3-564, the board of trustees, through its proper officers, and the Governor, on behalf of the state, shall execute and deliver such written evidence of title or of the creation of a leasehold interest as may be necessary. (Code 1981, § 20-3-565, enacted by Ga. L. 1990, p. 579, § 1.)

**20-3-566. Use of proceeds from sale or lease of property.**

The proceeds arising from any sale or lease of property under Code Section 20-3-564 shall be used for the support of the college or for the payment of any debts thereof as the board may determine. (Code 1981, § 20-3-566, enacted by Ga. L. 1990, p. 579, § 1.)

**20-3-567. Scholarships.**

(a) The board of trustees shall have the authority to grant to qualified students such scholarships as available funds allow. The board of trustees shall establish rules and regulations governing the eligibility for and awarding of such scholarships; provided, however, that all such scholarships which are funded by money appropriated by the General Assembly of Georgia shall be granted only to qualified students who are citizens and bona fide residents of this state and shall be apportioned on an equal basis by congressional district.

(b) The funds necessary to provide for the program of scholarships authorized by this Code section shall come from funds appropriated or otherwise made available to the board of trustees for such purposes; provided, however, that nothing in this Code section shall be construed to require the General Assembly to appropriate any such funds. (Code 1981, § 20-3-567, enacted by Ga. L. 1990, p. 579, § 1; Ga. L. 1996, p. 296, § 5.)

ARTICLE 10

COLLEGE OPPORTUNITY ACT

**20-3-600. Short title.**

This article shall be known and may be cited as the “College Opportunity Act.” (Code 1981, § 20-3-600, enacted by Ga. L. 1990, p. 1448, § 1.)



**20-3-601. Legislative findings.**

The General Assembly finds and declares the following:

(1) It is an essential function of state government to encourage schools and the means of education, as provided in Article VIII, Section I, Paragraph I of the Constitution;

(2) It is a responsibility of state government to maintain state institutions of higher education as provided by Article VIII, Section IV of the Constitution;

(3) It is an essential function of state government to encourage attendance at state institutions of higher education;

(4) Tuition costs at public institutions of higher education are difficult for many to afford and are unpredictable which causes problems when families attempt to plan for the cost of higher education;

(5) It is in the best interest of the people of this state to foster public higher education resulting in more educated citizens;

(6) It is in the best interest of the people of this state to encourage state residents to enroll in state public institutions of higher learning;

(7) Students in elementary and secondary schools tend to achieve to a higher standard of performance when the payment or tuition for their higher education is secured; and

(8) Providing assistance to assure the higher education of the citizens of this state is necessary and desirable for the public health, safety, and welfare. (Code 1981, § 20-3-601, enacted by Ga. L. 1990, p. 1448, § 1.)

**20-3-602. Purposes of article.**

In light of the findings described in Code Section 20-3-601, the General Assembly declares that the purposes of the Georgia Education Trust created by this article are:

(1) To encourage education and the means of education;

(2) To maintain state institutions of higher education by helping to provide a stable financial base to these institutions;

(3) To provide wide and affordable access to state institutions of higher education for the residents of this state;

(4) To encourage attendance at state institutions of higher education;

(5) To provide students and their parents economic protection against rising tuition costs;

(6) To provide students and their parents financial assistance for postsecondary education;

(7) To help provide the benefits of higher education to the people of this state; and

(8) To encourage elementary and secondary students in this state to achieve high standards of performance. (Code 1981, § 20-3-602, enacted by Ga. L. 1990, p. 1448, § 1.)

### 20-3-603. Definitions.

As used in this article, the term:

(1) “Advance tuition payment contract” means a contract entered into by the trust and a purchaser pursuant to this article to provide for the higher education of a qualified beneficiary.

(2) “Board” means the board of commissioners of the Georgia Student Finance Commission described in Code Section 20-3-234.

(3) “Fund” means the advance tuition payment fund created within the Georgia Education Trust as provided in Code Section 20-3-608.

(4) “Purchaser” means a person who makes or is obligated to make advance tuition payments pursuant to an advance tuition payment contract.

(5) “Qualified beneficiary” means any resident of this state.

(6) “State institution of higher education” means any four-year college or university within the University System of Georgia.

(7) “Trust” or “trust fund” means the Georgia Education Trust created in Code Section 20-3-604.

(8) “Weighted average tuition cost of state institutions of higher education” means the tuition cost arrived at by adding the products of the annual undergraduate in-state tuition cost at each state institution of higher education and its total number of undergraduate fiscal year equated students and then dividing the gross total of this cumulation by the total number of undergraduate fiscal year equated students attending state institutions of higher education. (Code 1981, § 20-3-603, enacted by Ga. L. 1990, p. 1448, § 1; Ga. L. 2001, p. 873, § 8.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2001, “in” was inserted following “described” in paragraph (2).

**20-3-604. Creation of Georgia Education Trust.**

(a) There is created a public body corporate and politic to be known as the Georgia Education Trust. The trust shall be within the Georgia Student Finance Commission.

(b) The purposes, powers, and duties of the trust are vested in and shall be exercised by a board of commissioners as described in Code Section 20-3-234. (Code 1981, § 20-3-604, enacted by Ga. L. 1990, p. 1448, § 1; Ga. L. 2001, p. 873, § 8.)

**Cross references.** — Georgia Student Finance Commission, creation, § 20-3-233.

**20-3-605. Advance tuition payment contract authorized; form and contents of contract.**

(a) The trust, on behalf of itself and the state, may contract with a purchaser for the advance payment of tuition by the purchaser for a qualified beneficiary to attend any of the state institutions of higher education to which the qualified beneficiary is admitted, without further tuition cost to the qualified beneficiary. In addition, an advance tuition payment contract shall set forth all of the following:

(1) The amount of the payment or payments required from the purchaser on behalf of the qualified beneficiary;

(2) The terms and conditions for making the payment, including, but not limited to, the date or dates upon which the payment, or portions of the payment, shall be due;

(3) Provisions for late payment charges and for default;

(4) The name and age of the qualified beneficiary under the contract. The purchaser, with the approval of and on conditions determined by the trust, may subsequently substitute another person for the qualified beneficiary originally named;

(5) The number of credit hours covered by the contract;

(6) The name of the person entitled to terminate the contract, which, as provided by the contract, may be the purchaser, the qualified beneficiary, or a person to act on behalf of the purchaser or qualified beneficiary, or any combination of these persons;

(7) The terms and conditions under which the contract may be terminated and the amount of the refund, if any, to which the person terminating the contract, or specifically the purchaser or designated qualified beneficiary if the contract so provides, shall be entitled upon termination;



(8) The assumption of a contractual obligation by the trust to the qualified beneficiary on its own behalf and on behalf of the state to provide for credit hours of higher education, not to exceed credit hours required for the granting of a baccalaureate degree, at any state institution of higher education to which the qualified beneficiary is admitted. The advance tuition payment contract shall provide for the credit hours of higher education that a qualified beneficiary may receive under the contract if the qualified beneficiary is not entitled to in-state tuition rates;

(9) The period of time from the beginning to the end of which the qualified beneficiary may receive the benefits under the contract;

(10) All other rights and obligations of the purchaser and the trust; and

(11) Other terms, conditions, and provisions as the trust considers in its sole discretion to be necessary or appropriate.

(b) The form of any advance tuition payment contract to be entered into by the trust shall first be approved by the Office of Planning and Budget.

(c) The trust shall make any arrangements that are necessary or appropriate with the board of regents or state institutions of higher education in order to fulfill its obligations under advance tuition payment contracts, which arrangements may include, but need not be limited to, the payment by the trust of the then actual in-state tuition cost on behalf of a qualified beneficiary to the state institution of higher education.

(d) An advance tuition payment contract shall provide that the trust provide for the qualified beneficiary to attend a community or junior college in this state before entering a state institution of higher education if the beneficiary so chooses and that the contract may be terminated pursuant to Code Section 20-3-607 after completing the requirements for a degree at the community or junior college in this state or before entering a state institution of higher education.

(e) An advance tuition payment contract may provide that, if after a number of years specified in the contract the contract has not been terminated or the qualified beneficiary's rights under the contract have not been exercised, the trust shall retain the amounts otherwise payable and the rights of the qualified beneficiary, the purchaser, or the agent of either shall be considered terminated. (Code 1981, § 20-3-605, enacted by Ga. L. 1990, p. 1448, § 1.)

**20-3-606. Types of advance tuition payment contracts; alternative provisions.**

(a) At a minimum, the trust shall offer contracts of the two types set forth in paragraphs (1) and (2) of this subsection, to be known as Plan A and Plan B, respectively.

(1) Under Plan A:

(A) A payment or series of installment payments of not less than \$50.00 per month shall be required from the purchaser on behalf of a qualified beneficiary.

(B) If an advance tuition payment contract is terminated before a qualified beneficiary earns a high school diploma or reaches the age of majority, or pursuant to paragraph (4) of subsection (a) of Code Section 20-3-607, the trust shall refund the face amount of the payment or payments in accordance with the terms of the contract, less any administrative fee specified in the contract, but shall not refund any investment income attributable to the payments.

(C) Except as provided in subparagraph (D) of this paragraph, the trust shall provide for the qualified beneficiary to attend a state institution of higher education at which the qualified beneficiary attends for the number of credit hours required by the institution for the awarding of a baccalaureate degree, without further tuition cost to the qualified beneficiary, except as provided in subsection (a) of Code Section 20-3-605 for a qualified beneficiary who is not entitled to in-state tuition rates.

(D) As an alternative to subparagraph (C) of this paragraph, the trust shall provide for the qualified beneficiary to attend a state institution of higher education at which the qualified beneficiary attends for a fixed number of credit hours, as permitted by the trust, less than the total number of credit hours required by the institution for the awarding of a baccalaureate degree, without further tuition cost to the qualified beneficiary for that fixed number of credit hours, except as provided in subsection (a) of Code Section 20-3-605 for a qualified beneficiary who is not entitled to in-state tuition rates.

(2) Under Plan B:

(A) A payment or series of installment payments of not less than \$50.00 per month shall be required on behalf of a qualified beneficiary.

(B) If an advance tuition payment contract is terminated before a qualified beneficiary earns a high school diploma or reaches the age of majority, or pursuant to paragraph (4) of subsection (a) of

Code Section 20-3-607, the trust shall refund the face amount of the payment or payments in accordance with the terms of the contract, less any administrative fee specified in the contract, together with all or a specified portion of accrued investment income attributable to the payment or payments as may be agreed to in the contract.

(C) Except as provided in subparagraph (D) of this paragraph, the trust shall provide for the qualified beneficiary to attend a state institution of higher education at which the qualified beneficiary attends for the number of credit hours required by the institution for the awarding of a baccalaureate degree, without further tuition cost to the qualified beneficiary, except as provided in subsection (a) of Code Section 20-3-605 for a qualified beneficiary who is not entitled to in-state tuition rates.

(D) As an alternative to subparagraph (C) of this paragraph, the trust shall provide for the qualified beneficiary to attend a state institution of higher education at which the qualified beneficiary attends for a fixed number of credit hours, as permitted by the trust, less than the total number of credit hours required by the institution for the awarding of a baccalaureate degree, without further tuition cost to the qualified beneficiary for that fixed number of credit hours, except as provided in subsection (a) of Code Section 20-3-605 for a qualified beneficiary who is not entitled to in-state tuition rates.

(b) Contracts required to be offered by this Code section may require that payment or payments from a purchaser, on behalf of a qualified beneficiary who may attend a state institution of higher education in less than four years after the date the contract is entered into by the purchaser, be based upon attendance at a certain state institution of higher education or at that state institution of higher education with the highest prevailing tuition cost for the number of credit hours covered by the contract.

(c) Contracts required to be offered by this Code section shall be offered with two alternatives. One alternative shall offer advance tuition payment contracts that provide the credit hours of higher education necessary for the granting of a baccalaureate degree at any of the state institutions of higher education. The second alternative shall provide that the number of credit hours of higher education a qualified beneficiary may receive under the contract will be reduced to a percentage of the credit hours required for the granting of a baccalaureate degree at a state institution of higher education, as specified in the contract, if the qualified beneficiary enrolls in a state institution of higher education imposing at the time the qualified beneficiary enrolls an annual tuition rate that is greater than 105 percent of the weighted average annual tuition rate of all state institutions of higher education.



This subsection shall not preclude a state institution of higher education at which a qualified beneficiary is entitled to receive less than the minimum number of credit hours required for the granting of a baccalaureate degree from providing that qualified beneficiary, without further tuition charges, the additional credit hours necessary to receive a baccalaureate degree.

(d) If a beneficiary of an advance tuition payment contract with either an alternative one or alternative two designation, as described in subsection (c) of this Code section, attends a community or junior college for two years at the in-state tuition rate, that beneficiary then may attend any state institution of higher education at no additional tuition cost and receive the number of credit hours necessary for the awarding of a baccalaureate degree. (Code 1981, § 20-3-606, enacted by Ga. L. 1990, p. 1448, § 1.)

#### **20-3-607. Termination of advance tuition payment contracts; refunds.**

(a) An advance tuition payment contract shall authorize a termination of the contract when any one of the following occurs:

(1) The qualified beneficiary dies;

(2) The qualified beneficiary is not admitted to a state institution of higher education after making proper application;

(3) The qualified beneficiary certifies to the trust that he or she has decided to attend and has been accepted by a Georgia independent, degree-granting institution of postsecondary education recognized by the board of regents or, after he or she has a high school diploma or has reached the age of majority, he or she has decided not to attend a state institution of higher education and requests, in writing, before July 15 of the year in which the qualified beneficiary desires to terminate the contract, that the advance tuition payment contract be terminated; or

(4) Other circumstances, determined by the trust and set forth in the advance tuition payment contract, occur.

(b) Except as provided in subparagraphs (a)(1)(B) and (a)(2)(B) of Code Section 20-3-606, an advance tuition payment contract shall provide for a refund pursuant to this Code section to a person to whom the refund is payable under the contract upon termination of the contract. If the qualified beneficiary has a high school diploma or has reached the age of majority, and attends an institution of higher education, the amount of a refund, except as provided in subsection (d) of this Code section, shall be the lesser of the average tuition cost of all state institutions of higher education on the date of termination of the

contract, or the face amount of the payment or payments and any accrued investment income attributable to the payment or payments, if he or she is covered by alternative one, as described in subsection (c) of Code Section 20-3-606, or the lowest tuition cost of all state institutions of higher education on the date of termination of the contract if he or she is covered by alternative two or does not attend an institution of higher education. The amount of a refund shall be reduced by an appropriate percentage if the purchaser entered into an advance tuition payment contract that provided for a fixed number of credit hours less than the total number of credit hours required by a state institution of higher education for the awarding of a baccalaureate degree, by the amount transferred to a community or junior college on behalf of a qualified beneficiary when the contract is terminated as provided in subsection (d) of Code Section 20-3-605, and by the amount transferred to a state institution of higher education on behalf of a qualified beneficiary. Termination of a contract and the right to receive a refund shall not be authorized under the contract if the qualified beneficiary has completed more than one-half of the credit hours required by the state institution of higher education for the awarding of a baccalaureate degree. However, this provision shall not affect the termination and refund rights of a graduate of a community or junior college. Pursuant to this subsection and except as provided by subsection (c) of this Code section, the trust shall make refund payments in equal installments over four years and not later than August 15 of the year due.

(c) An advance tuition payment contract shall authorize a person, who is entitled under the advance tuition payment contract to terminate the contract, to direct payment of the refund to an independent degree-granting college or university in this state or to a community or junior college located in this state. If directed to make payments pursuant to this subsection, the trust shall transfer to the designated institution an amount equal to the tuition due for the qualified beneficiary, but the trust shall not transfer a cumulative amount greater than the refund to which the person is entitled. If the refund exceeds the total amount of transfers directed to the designated institution, the excess shall be returned to the person to whom the refund is otherwise payable.

(d) Notwithstanding any other provision of this article, the amount of a refund paid upon termination of the advance tuition payment contract by a person who directs the trust pursuant to subsection (c) of this Code section to transfer the refund to an independent degree-granting college or university located in this state shall not be less than the prevailing weighted average tuition cost of state institutions of higher education for the number of credit hours covered by the contract on the date of termination. In calculating the amount of a refund for an advance payment contract containing the restrictions

provided by subsection (c) of Code Section 20-3-606, the prevailing weighted average tuition cost shall be based upon only those state institutions of higher education at which the qualified beneficiary could have received sufficient credit hours for a baccalaureate degree. (Code 1981, § 20-3-607, enacted by Ga. L. 1990, p. 1448, § 1.)

**20-3-608. Advance tuition payment fund; expenditure of trust assets.**

(a) There is created under the jurisdiction and control of the board and within the trust an advance tuition payment fund. Payments received by the trust from purchasers on behalf of qualified beneficiaries or from any other source, public or private, shall be placed in the fund. The fund may be divided into separate accounts.

(b) Assets of the trust, including the fund, shall not be considered state moneys or revenues of the state and shall not be governed by Article III, Section IX or Article VII, Section III of the Constitution.

(c) Unless otherwise provided by resolution of the board, assets of the trust shall be expended in the following order of priority:

(1) To make payments to state institutions of higher education on behalf of qualified beneficiaries;

(2) To make refunds upon termination of an advance tuition payment contract; and

(3) To pay the costs of organization, administration, and operation of the trust and the fund. (Code 1981, § 20-3-608, enacted by Ga. L. 1990, p. 1448, § 1.)

**20-3-609. Public meetings; writings and performance of official duties.**

(a) The business which the board may perform shall be conducted at a public meeting of the board held in compliance with Chapter 14 of Title 50. Public notice of the time, date, and place of the meeting shall be given in the manner required by subsection (e) of Code Section 50-14-1.

(b) A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the public if required by Article 4 of Chapter 18 of Title 50. (Code 1981, § 20-3-609, enacted by Ga. L. 1990, p. 1448, § 1; Ga. L. 2001, p. 873, § 8; Ga. L. 2002, p. 415, § 20.)

**20-3-610. Powers of board.**

In addition to the powers granted by other provisions of this article, the board shall have the powers necessary or convenient to carry out



and effectuate the purposes, objectives, and provisions of this article, the purposes and objectives of the trust, and the powers delegated by other laws or executive orders, including, but not limited to, the power to:

(1) Invest any money of the trust fund only in general obligations of the United States or of subsidiary corporations of the United States government fully guaranteed by such government, or to obligations issued by the Federal Land Bank, Federal Home Loan Bank, Federal Intermediate Credit Bank, Bank for Cooperatives, Federal Farm Credit Banks, or to tax-exempt obligations issued by any state, county, municipal corporation, district, or political subdivision, or civil division or public instrumentality of any such government or unit of such government, or to the units of any unit investment trusts the assets of which are exclusively invested in obligations of the type described above, or to the shares of any mutual fund the investments of which are limited to securities of the type described above and distributions from which are treated for federal income tax purposes in the same manner as the interest on said obligations, provided that at the time of investment such obligations or the obligations held by any such unit investment trust or the obligations held or to be acquired by any such mutual fund are limited to obligations which are rated within one of the top two rating categories of any nationally recognized rating service or any rating service recognized by the commissioner of banking and finance, and no others;

(2) Pay money to state institutions of higher education from the trust;

(3) Impose reasonable residency requirements for qualified beneficiaries;

(4) Impose reasonable limits on the number of participants in the trust;

(5) Segregate contributions and payments to the trust fund into various accounts and funds;

(6) Contract for goods and services and engage personnel as is necessary and engage the services of private consultants, actuaries, managers, legal counsel, and auditors for rendering professional, management, and technical assistance and advice, payable out of any money of the trust fund;

(7) Solicit and accept gifts, grants, loans, and other aid from any person or the federal, state, or a local government or any agency of the federal, state, or a local government or to participate in any other way in any federal, state, or local government program;

(8) Charge, impose, and collect administrative fees and charges in connection with any transaction and to provide for reasonable pen-

alties, including default, for delinquent payment of fees or charges or for fraud;

(9) Procure insurance against any loss in connection with the trust's property, assets, or activities;

(10) Bring actions and defend actions; have a seal and alter the same at pleasure; have perpetual succession; make, execute, and deliver contracts, conveyances, and other instruments necessary or convenient to the exercise of its powers; and make and amend bylaws;

(11) Enter into contracts on behalf of the state;

(12) Administer the funds of the trust;

(13) Indemnify or procure insurance indemnifying any member of the board from personal loss or accountability from liability resulting from a member's action or inaction as a member of the board, including, but not limited to, liability asserted by a person on any bonds or notes of the trust;

(14) Impose reasonable time limits on use of the tuition benefits provided by the trust, if the limits are made a part of the contract;

(15) Define the terms and conditions under which money may be withdrawn from the trust, including, but not limited to, reasonable charges and fees for any such withdrawal, if the terms and conditions are made a part of the contract;

(16) Provide for receiving contributions in lump sums or periodic sums;

(17) Establish policies, procedures, and eligibility criteria to implement this article; and

(18) Enter into arrangements with Georgia institutions of higher education for the trust to offer on behalf of the institution advance tuition payment contracts under which the Georgia institution of higher education will be contractually obligated to provide a beneficiary under the contract with credit hours of higher education in addition to those required for a baccalaureate degree. (Code 1981, § 20-3-610, enacted by Ga. L. 1990, p. 1448, § 1.)

### **20-3-611. Accounts; audits.**

The board shall annually prepare or cause to be prepared an accounting of the trust and shall transmit a copy of the accounting to the Governor and the General Assembly. The board shall also make available the accounting of the trust to the purchasers of the trust. The accounts of the board shall be subject to annual audits by the state

auditor or a certified public accountant appointed by the state auditor. (Code 1981, § 20-3-611, enacted by Ga. L. 1990, p. 1448, § 1.)

**20-3-612. Requirements for administration of trust; evaluation of actuarial soundness; applicability of federal securities laws.**

(a) The trust shall be administered in a manner reasonably designed to be actuarially sound such that the assets of the trust will be sufficient to defray the obligations of the trust.

(b) In the accounting of the trust made pursuant to Code Section 20-3-611, the board shall annually evaluate or cause to be evaluated the actuarial soundness of the trust by a nationally recognized actuarial firm and determine the additional assets needed, if any, to defray the obligations of the trust. If there are not funds sufficient to ensure the actuarial soundness of the trust, the trust shall adjust payments of subsequent purchases to ensure its actuarial soundness. If there are insufficient numbers of new purchasers to ensure the actuarial soundness of a plan of the trust, the available assets of the trust attributable to the plan shall be immediately prorated among the then existing contracts, and these shares shall be applied, at the option of the person to whom the refund is payable or would be payable under the contract upon termination of the contract, either towards the purposes of the contract for a qualified beneficiary or disbursed to the person to whom the refund is payable or would be payable under the contract upon termination of the contract.

(c) Before entering into advance tuition payment contracts with purchasers, the trust shall solicit answers to appropriate ruling requests from the Securities and Exchange Commission regarding the application of federal security laws to the trust. No contracts shall be entered without the trust making known the status of the request. (Code 1981, § 20-3-612, enacted by Ga. L. 1990, p. 1448, § 1.)

**20-3-613. Contracts for provision of services; programs to ensure full tuition payment; exclusive plans for community and junior colleges; report to legislature.**

The trust, in its discretion, may contract with others, public or private, for the provision of all or a portion of the services necessary for the management and operation of the trust. The trust shall also endeavor to work with private sector investment managers, state institutions of higher education, and independent degree-granting colleges and universities in this state to study the feasibility of instituting programs among these parties that ensure full tuition payment upon purchase of a prepayment plan. The trust shall evaluate



the feasibility and actuarial soundness of a prepayment plan exclusively for community and junior colleges. The board shall submit a report to the legislature before December 31, 1991, regarding its success at instituting programs among private sector investment managers, state institutions of higher education, and independent degree-granting colleges and universities of the state that ensure full tuition prepayment plans. (Code 1981, § 20-3-613, enacted by Ga. L. 1990, p. 1448, § 1; Ga. L. 1992, p. 6, § 20.)

**20-3-614. Preservation of assets of trust fund; investment in obligations of state.**

The assets of the trust fund shall be preserved, invested, and expended solely pursuant to and for the purposes set forth in this article and shall not be loaned or otherwise transferred or used by the state for any purpose other than the purposes of this article. This Code section shall not be construed to prohibit the trust from investing in, by purchase or otherwise, bonds, notes, or other obligations of the state, an agency of the state, or an instrumentality of the state. (Code 1981, § 20-3-614, enacted by Ga. L. 1990, p. 1448, § 1.)

**20-3-615. Admission to or graduation from institutions not guaranteed.**

Nothing in this article or in an advance tuition payment contract entered into pursuant to this article shall be construed as a promise or guarantee by the trust or the state that a person will be admitted to a state institution of higher education or to a particular state institution of higher education, will be allowed to continue to attend a state institution of higher education after having been admitted, or will be graduated from a state institution of higher education. (Code 1981, § 20-3-615, enacted by Ga. L. 1990, p. 1448, § 1.)

**20-3-616. Exemption from securities law; approval required for transfer of advance tuition payment contracts.**

An advance tuition payment contract shall be exempt from Chapter 5 of Title 10, the "Georgia Uniform Securities Act of 2008." An advance tuition payment contract may not be sold or otherwise transferred by the purchaser or qualified beneficiary without the prior approval of the trust. (Code 1981, § 20-3-616, enacted by Ga. L. 1990, p. 1448, § 1; Ga. L. 2008, p. 381, § 10/SB 358.)

**20-3-617. Costs of trust operations.**

On and after July 1, 1991, all costs of organization, administration, and operation of the trust shall be paid solely from application fee funds

and investment income of the trust. (Code 1981, § 20-3-617, enacted by Ga. L. 1990, p. 1448, § 1.)

## ARTICLE 11

### GEORGIA HIGHER EDUCATION SAVINGS PLAN

**Law reviews.** — For note on the 2001 20-3-642, see 18 Ga. St. U. L. Rev. 84 enactment of O.C.G.A. §§ 20-3-630 to (2001).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 20 et seq.

#### 20-3-630. Short title.

This article shall be known and may be cited as the “Georgia Higher Education Savings Plan Act.” (Code 1981, § 20-3-630, enacted by Ga. L. 2001, p. 76, § 1.)

#### 20-3-631. Purpose.

The purposes of this article are to:

(1) Provide a program or programs of savings trust agreements to apply distributions toward qualified higher education expenses at eligible educational institutions, as defined in Section 529 of the Internal Revenue Code or other applicable federal law;

(2) Provide for the creation of the Georgia Higher Education Savings Plan, as an instrumentality of the State of Georgia, to assist qualified students in financing costs of attending institutions of higher education;

(3) Encourage timely financial planning for higher education by the creation of savings trust accounts;

(4) Provide a savings program for those persons who wish to save to meet postsecondary educational needs, including postgraduate educational needs; and

(5) Attract students to institutions of higher education within the state. (Code 1981, § 20-3-631, enacted by Ga. L. 2001, p. 76, § 1; Ga. L. 2008, p. 159, § 1/HB 1014.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2001, Code Section 20-2-631, as enacted by Ga. L. 2001, p. 76, § 1, was redesignated as 20-3-631.

**U.S. Code.** — Section 529 of the Internal Revenue Code, referred to in paragraph (1), is codified in Title 26 of the United States Code.

**Law reviews.** — For article, “Wills,

Trusts & Administration of Estates," see 53 Mercer L. Rev. 499 (2001).

### 20-3-632. Definitions.

As used in this article, the term:

(1) "Account contributor" means a resident or nonresident person, corporation, trust, charitable organization, or other entity which contributes to or invests money in a savings trust account under the program on behalf of a beneficiary. For resident or nonresident persons, the account contributor may also be the designated beneficiary of the account.

(2) "Account owner" means a resident or nonresident person, corporation, trust, charitable organization, or other entity that establishes a savings trust account under the program on behalf of a beneficiary. For resident or nonresident persons, the account owner may also be the designated beneficiary of the account.

(3) "Beneficiary" means a resident or nonresident beneficiary of a savings trust agreement who meets the requirements of Section 529 of the Internal Revenue Code of 1986 or other applicable federal law and any regulations established by the board.

(4) "Board" means the Board of Directors of the Georgia Higher Education Savings Plan.

(5) Reserved.

(6) "Financial organization" means an organization which is:

(A) A fiduciary authorized to act as a trustee pursuant to the provisions of the federal Employee Retirement Income Security Act of 1974, as amended, or an insurance company or affiliate; and

(B)(i) Licensed or chartered by the Insurance Department;

(ii) Licensed or chartered by the Department of Banking and Finance;

(iii) Chartered by an agency of the federal government;

(iv) Subject to the jurisdiction and regulation of the federal Securities and Exchange Commission;

(v) Any other entity otherwise authorized to act in this state as a trustee pursuant to the provisions of the federal Employee Retirement Income Security Act of 1974, as amended; or

(vi) Any investment adviser registered with the United States Securities and Exchange Commission pursuant to the Investment Advisers Act of 1940.



(7) “Institution of higher education” means an eligible educational institution as defined in Section 529 of the Internal Revenue Code of 1986 or other applicable federal law.

(8) “Internal Revenue Code” or “Internal Revenue Code of 1986” has the meaning provided by Code Section 48-1-2.

(9) “Plan” means the Georgia Higher Education Savings Plan established under this article.

(10) “Program” means a program of savings trust agreements and savings trust accounts provided by the plan under Section 529 of the Internal Revenue Code or other applicable federal law.

(11) “Qualified higher education expense” means any higher education expense as defined in Section 529 of the Internal Revenue Code of 1986 or other applicable federal law.

(12) “Qualified withdrawal” means a withdrawal by an account owner for qualified higher education expenses of the beneficiary or as otherwise permitted under Section 529 of the Internal Revenue Code of 1986 without a penalty or the imposition of taxes on the withdrawal.

(13) “Savings trust account” means an account established by an account owner pursuant to this article on behalf of a beneficiary in order to apply distributions from the account toward qualified higher education expenses at eligible educational institutions as defined in Section 529 of the Internal Revenue Code of 1986 or other applicable federal law.

(14) “Savings trust agreement” means the agreement entered into between the board and the account owner establishing a savings trust account.

(15) “Trust fund” means the Georgia Higher Education Savings Plan Trust Fund.

(16) “Unqualified withdrawal” means a withdrawal by an account owner that is not:

(A) A qualified withdrawal;

(B) A withdrawal by reason of the death or disability of the beneficiary;

(C) A withdrawal made in connection with the receipt by the beneficiary of a scholarship; or

(D) A distribution to another qualified state tuition program. (Code 1981, § 20-3-632, enacted by Ga. L. 2001, p. 76, § 1; Ga. L. 2002, p. 372, § 8; Ga. L. 2008, p. 159, § 2/HB 1014; Ga. L. 2010, p. 863, § 5/SB 296.)

**The 2010 amendment**, effective July 1, 2010, substituted "Reserved." for the former provisions of paragraph (5), which read: "'Director' means the director of the Office of Treasury and Fiscal Services."

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2001, "adviser" was substituted for "advisor" in division (5)(B)(vi) (now (6)(B)(vi)).

**Editor's notes.** — Ga. L. 2002, p. 372, § 15(b), not codified by the General Assembly, provides that this Act shall be

applicable to all taxable years beginning on or after January 1, 2002.

**U.S. Code.** — The Internal Revenue Code, referred to throughout this Code section, is codified at Title 26 of the United States Code.

The federal Employee Retirement Income Security Act of 1974, referred to in subparagraph (6)(A) and division (6)(B)(v), is codified, principally, as 29 U.S.C. § 1001 et seq.

### **20-3-633. Creation; board of directors; assignment to Department of Administrative Services.**

(a)(1) There is created the Georgia Higher Education Savings Plan, as a body corporate and politic and an instrumentality of the state, for purposes of establishing and maintaining the Georgia Higher Education Savings Plan Trust Fund and qualified tuition programs under Section 529 of the Internal Revenue Code as provided by this article. The plan shall be governed by a board of directors consisting of the Governor as chairperson, the Chancellor of the Board of Regents of the University System of Georgia, the commissioner of the Technical College System of Georgia, the executive director of the Georgia Student Finance Commission, the state auditor, the director of the Office of Planning and Budget, the state revenue commissioner, three directors who shall be appointed by and serve at the pleasure of the Governor, and the state treasurer who shall act as administrative officer of the board. A majority of the board shall constitute a quorum, and the acts of the majority shall be the acts of the board.

(2) Members of the board who are state officials or employees shall receive no compensation for their service on the board but may be reimbursed for expenses incurred by them in the performance of their duties as members of the board. Any members of the board who are not state officials or employees shall receive a daily expense allowance in the amount specified in subsection (b) of Code Section 45-7-21 for each day such member is in attendance at a meeting of the board. Expense allowances and other costs authorized in this paragraph shall be paid from moneys in the trust fund.

(b) The board shall have the authority necessary or convenient to carry out the purposes and provisions of this article and the purposes and objectives of the trust fund, including, but not limited to, the authority to:

(1) Have a seal and alter the same at its pleasure; bring and defend actions; make, execute, and deliver contracts, conveyances, and other

instruments necessary or convenient to the exercise of its powers; and make and amend bylaws;

(2) Adopt such rules and regulations as are necessary to implement this article, subject to applicable federal laws and regulations, including rules regarding transfers of funds between accounts established under savings trust agreements;

(3) Contract for necessary goods and services, employ necessary personnel, and engage the services of consultants and other qualified persons and entities for administrative and technical assistance in carrying out the responsibilities of the trust fund under terms and conditions that the board deems reasonable; and any and all state departments or agencies are authorized to contract with the board, and the board is authorized to contract with such departments or agencies, upon such terms, for such consideration, and for such purposes as they deem advisable;

(4) Solicit and accept gifts, including bequests or other testamentary gifts made by will, trust, or other disposition grants, loans, and other aids from any personal source or participate in any other way in any federal, state, or local governmental program in carrying out the purposes of this article;

(5) Define the terms and conditions under which payments may be withdrawn or refunded from the trust fund established under this article and impose reasonable charges for a withdrawal or refund;

(6) Impose reasonable time limits on the use of savings trust account distributions provided by the program;

(7) Regulate the receipt of contributions or payments to the trust fund;

(8) Require and collect fees and charges to cover the reasonable costs of administering savings trust accounts and impose penalties on an unqualified withdrawal of funds or for entering into a savings trust agreement on a fraudulent basis;

(9) Procure insurance against any loss in connection with the property, assets, and activities of the trust fund or the plan;

(10) Require that account owners of savings trust agreements verify in writing, before a person authorized to administer oaths, any requests for contract conversions, substitutions, transfers, cancellations, refund requests, or contract changes of any nature;

(11) Solicit proposals and contract for the marketing of the program, provided that any materials produced by a marketing contractor for the purpose of marketing the program must be approved by the board before being made available to the public, unless otherwise



directed by the board, establish a name for the program, and adopt and use marketing names, brands, logos, or other descriptions or representations of the program as may be deemed desirable or convenient for promoting, publicizing, or otherwise marketing the program within this state, outside this state, or both;

(12) Delegate responsibility for administration of any program to a financial organization that the board determines is qualified;

(13) Make all necessary and appropriate arrangements with colleges and universities or other entities in order to fulfill its obligations under savings trust agreements;

(14) Establish other policies, procedures, and criteria and perform such other acts as necessary or appropriate to implement and administer this article; and

(15) Authorize the state treasurer to carry out any or all of the powers and duties enumerated in this subsection for efficient and effective administration of the plan, program, and trust fund.

(c) The plan is assigned to the Department of Administrative Services for administrative purposes only. (Code 1981, § 20-3-633, enacted by Ga. L. 2001, p. 76, § 1; Ga. L. 2002, p. 372, § 9; Ga. L. 2008, p. 159, §§ 3, 4/HB 1014; Ga. L. 2010, p. 863, § 3/SB 296; Ga. L. 2012, p. 775, § 20/HB 942.)

**The 2010 amendment**, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” near the end of the second sentence of paragraph (a)(1) and near the beginning of paragraph (b)(15).

**The 2012 amendment**, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted

“commissioner of the Technical College System of Georgia” for “commissioner of technical and adult education” in paragraph (a)(1).

**Editor’s notes.** — Ga. L. 2002, p. 372, § 15(b), not codified by the General Assembly, provides that this Act shall be applicable to all taxable years beginning on or after January 1, 2002.

## **20-3-634. Savings trust accounts; availability; terms and provisions.**

(a) The plan, through one or more programs, shall make savings trust agreements and savings trust accounts available to the public, under which account owners or account contributors may make contributions on behalf of qualified beneficiaries. Contributions and investment earnings on the contributions may be used for any qualified higher educational expenses of a designated beneficiary. The state shall not guarantee that such contributions, together with the investment return on such contributions, if any, will be adequate to pay for qualified education expenses in full. Savings trust agreements shall be available to both residents of the State of Georgia and nonresidents of the State

of Georgia. One or more savings trust accounts may be established for any qualified beneficiary, subject to the limitations of this article.

(b) Each savings trust agreement made pursuant to this article shall include the following terms and provisions:

(1) The maximum and minimum contribution allowed on behalf of each beneficiary for the payment of qualified higher education expenses at eligible institutions as defined in Section 529 of the Internal Revenue Code of 1986 or other applicable federal law; provided, however, that no additional contributions may be made to a savings trust account when the total account balance for all accounts for the beneficiary equals or exceeds \$235,000.00;

(2) Provisions for assessment and collection of reasonable fees which shall be charged to cover the administration of the account;

(3) Provisions for withdrawals, refunds, rollovers, transfers, and any penalties. An account owner may roll over all or part of any balance in an account to an account established on behalf of a different beneficiary to the extent allowed by Section 529 of the Internal Revenue Code. Unqualified withdrawals of contributions and earnings shall be subject to such penalties or taxation as may be imposed by the Internal Revenue Code. At its discretion, the board may impose additional penalties on unqualified withdrawals to be used by the plan to defray expenses; provided, however, that no such penalty shall apply to any withdrawal that does not require a penalty or tax surcharge under the Internal Revenue Code of 1986;

(4) The name, address, and date of birth of the beneficiary on whose behalf the savings trust account is opened;

(5) Terms and conditions for a substitution of the beneficiary originally named;

(6) Terms and conditions for termination of the account, including any refunds, withdrawals, or transfers, applicable penalties, and the name of the person or persons entitled to terminate the account;

(7) All other rights and obligations of the account owner or account contributor and the trust fund; and

(8) Any other terms and conditions that the board deems necessary or appropriate, including without limitation those necessary to conform the savings trust account with the requirements of Section 529 of the Internal Revenue Code of 1986 or other applicable federal law. (Code 1981, § 20-3-634, enacted by Ga. L. 2001, p. 76, § 1; Ga. L. 2002, p. 372, § 10; Ga. L. 2007, p. 112, § 1/HB 225; Ga. L. 2008, p. 159, § 5/HB 1014.)

**Cross references.** — Computation of taxable net income, § 48-7-27.

**Editor's notes.** — Ga. L. 2002, p. 372, § 15(b), not codified by the General Assembly, provides that this Act shall be applicable to all taxable years beginning on or after January 1, 2002.

**U.S. Code.** — The Internal Revenue Code, referred to throughout subsection (b), is codified at Title 26 of the United States Code.

**20-3-635. Administration of fund; types of accounts; office location; record maintenance; form of contribution; earnings; preservation.**

(a)(1) There is created the Georgia Higher Education Savings Plan Trust Fund as a separate fund in the state treasury. The trust fund shall be administered by the state treasurer. The state treasurer shall credit to the trust fund all amounts transferred to such fund. The trust fund shall consist of money remitted in accordance with savings trust agreements and any moneys acquired from other governmental or private sources and shall receive and hold all payments, contributions, and deposits intended for it as well as gifts, bequests, or endowments; grants; any other public or private source of funds; and all earnings on the fund until disbursed as provided under this Code section. The amounts on deposit in the trust fund shall not constitute property of the state. Amounts on deposit in the trust fund shall not be commingled with state funds, and the state shall have no claim to or interest in such funds other than the amount of reasonable fees and charges assessed to cover administration costs. Savings trust agreements or any other contract entered into by or on behalf of the trust fund shall not constitute a debt or obligation of the state, and no account owner or account contributor shall be entitled to any amounts except for those amounts on deposit in or accrued to the account of such contributor.

(2) The trust fund shall continue in existence so long as it holds any funds belonging to an account owner or otherwise has any obligations to any person or entity and until its existence is terminated by law and remaining assets on deposit in the trust fund are returned to account owners or transferred to the state in accordance with unclaimed property laws.

(b)(1) The following three separate accounts are created within the trust fund:

- (A) The administrative account;
- (B) The endowment account; and
- (C) The program account.

(2) The administrative account shall accept, deposit, and disburse funds for the purpose of administering and marketing the program.



The endowment account shall accept, deposit, and disburse amounts received in connection with the sales of interests in the trust fund or other contributions, other than amounts for the administrative account and other than amounts received pursuant to a savings trust agreement. Amounts on deposit in the endowment account may be applied as specified by the board for any purpose related to the program. The program account shall receive, invest, and disburse amounts pursuant to savings trust agreements.

(c) The official location of the trust fund shall be the Office of the State Treasurer, and the facilities of the Office of the State Treasurer shall be used and employed in the administration of the fund, including without limitation the keeping of records, the management of bank accounts and other investments, the transfer of funds, and the safe-keeping of securities evidencing investments. These functions may be administered pursuant to a management agreement with a qualified entity or entities.

(d) Payments received by the board on behalf of beneficiaries from account contributors, other payors, or from any other source, public or private, shall be placed in the trust fund, and the board shall cause there to be maintained separate records and accounts for individual beneficiaries as may be required under Section 529 of the Internal Revenue Code of 1986 or other applicable federal law.

(e) Account contributors shall be permitted only to contribute cash or any other form of payment or contribution as is permitted under Section 529 of the Internal Revenue Code of 1986 and approved by the board. The board shall cause the program to maintain adequate safeguards against contributions in excess of what may be required for qualified higher education expenses. The trust fund, through the state treasurer, may receive and deposit into the trust fund any gift of any nature, real or personal property, made by an individual by testamentary disposition, including without limitation any specific gift or bequest made by will, trust, or other disposition to the extent permitted under Section 529 of the Internal Revenue Code of 1986. The trust fund may receive amounts transferred under Article 5 of Chapter 5 of Title 44, "The Georgia Transfers to Minors Act"; under the Uniform Transfers to Minors Act, Uniform Gift to Minors Act, or other substantially similar act of another state, subject to the provisions of subsection (c) of Code Section 44-5-112; or from some other account established for the benefit of a minor if the trust beneficiary of such an account is identified as the legal owner of the trust fund account upon attaining majority age.

(f) Earnings derived from investment of the contributions shall be considered to be held in trust in the same manner as contributions, except as applied for purposes of the designated beneficiary and for

purposes of maintaining and administering the program as provided in this article. Amounts on deposit in an account owner's account shall be available for administrative fees and expenses and penalties imposed by the board for the plan as disclosed in the savings trust agreement.

(g) The assets of the trust fund shall be preserved, invested, and expended solely pursuant to and for the purposes of this article and shall not be loaned or otherwise transferred or used by the state for any other purpose. (Code 1981, § 20-3-635, enacted by Ga. L. 2001, p. 76, § 1; Ga. L. 2002, p. 372, § 11; Ga. L. 2010, p. 863, §§ 2, 4/SB 296.)

**The 2010 amendment**, effective July 1, 2010, substituted "state treasurer" for "director" in the second and third sentences in paragraph (a)(1) and in the third sentence of subsection (e); and substituted "Office of the State Treasurer" for "Office of Treasury and Fiscal Services" in two places in the first sentence of subsection (c).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2001, a comma

was deleted following "private sources" in the fourth sentence of paragraph (a)(1).

**Editor's notes.** — Ga. L. 2002, p. 372, § 15(b), not codified by the General Assembly, provides that this Act shall be applicable to all taxable years beginning on or after January 1, 2002.

**U.S. Code.** — The Internal Revenue Code, referred to in subsections (d) and (e), is codified at Title 26 of the United States Code.

## **20-3-636. Taxation of fund property and income.**

The trust fund property and income shall be subject to taxation by the state only as provided by Code Section 48-7-27 and shall not be subject to taxation by any of the state's political subdivisions. (Code 1981, § 20-3-636, enacted by Ga. L. 2001, p. 76, § 1.)

## **20-3-637. Investment of plan funds; competitive solicitation of service providers; sale, assignment or transfer of investments.**

(a) The board shall have authority to establish a comprehensive investment plan for the purposes of this article and to invest any funds of the trust fund through the state treasurer. The state treasurer shall invest the trust fund moneys pursuant to an investment policy adopted by the board. Notwithstanding any state law to the contrary, the board, through the state treasurer, shall invest or cause to be invested amounts on deposit in the trust fund, including the program account, in a manner reasonable and appropriate to achieve the objectives of the plan, exercising the discretion and care of a prudent person in similar circumstances with similar objectives. The board shall give due consideration to the risk of, expected rate of return of, term or maturity of, diversification of total investments of, liquidity of, and anticipated investments in and withdrawals from the trust fund.

(b) All contractors, vendors, or other service providers, including, but not limited to, financial organizations, investments, and investment

options shall be selected by competitive solicitation, unless otherwise directed by the board.

(c) All investments shall be marked clearly to indicate ownership by the plan and, to the extent possible, shall be registered in the name of the plan.

(d) Subject to the terms, conditions, limitations, and restrictions set forth in this Code section, the board may sell, assign, transfer, and dispose of any of the securities and investments of the plan if the sale, assignment, or transfer has the majority approval of the entire board. The board may employ or contract with financial organizations, investment managers, evaluation services, or other such services as determined by the board to be necessary for the effective and efficient operation of the program.

(e) Members and employees of the board shall be subject to the provisions of Chapter 10 of Title 45, relating to codes of ethics and conflicts of interest.

(f) The board shall establish criteria for financial organizations, investment managers, mutual funds, or other such entities to act as contractors or consultants to the board. The board may contract, either directly or through such contractors or consultants, to provide such services as may be a part of the comprehensive investment plan or as may be deemed necessary or proper by the board, including without limitation providing consolidated billing, individual and collective record keeping and accounting, and asset purchase, control, and safe-keeping.

(g) No account owner, account contributor, or beneficiary shall directly or indirectly direct the investment of any account except as may be permitted under Section 529 of the Internal Revenue Code of 1986 or other applicable federal law.

(h) The board may approve different investment plans and options to be offered to participants to the extent permitted under Section 529 of the Internal Revenue Code of 1986 or other applicable federal law and consistent with the objectives of this article, and the board may require the assistance of investment counseling before participation in different options.

(i) No account owner or designated beneficiary shall pledge any interest in the program or any portion thereof as security for a loan. (Code 1981, § 20-3-637, enacted by Ga. L. 2001, p. 76, § 1; Ga. L. 2002, p. 372, § 12; Ga. L. 2010, p. 863, § 4/SB 296.)

**The 2010 amendment**, effective July 1, 2010, substituted “state treasurer” for “director” in three places in subsection (a).

**Editor’s notes.** — Ga. L. 2002, p. 372, § 15(b), not codified by the General Assembly, provides that this Act shall be



applicable to all taxable years beginning on or after January 1, 2002.

U.S. Code. — The Internal Revenue Code, referred to in subsections (g) and (h), is codified at Title 26 of the United States Code.

### **20-3-638. Annual statement and report requirements; audits.**

(a) The board shall furnish, subject to reasonable administrative fees and charges, to each account owner an annual statement of the following:

(1) The amount contributed under the savings trust agreement;

(2) The annual earnings and accumulated earnings on the savings trust account; and

(3) Any other terms and conditions that the board deems by rule are necessary or appropriate, including without limitation those necessary to conform the savings trust account with the requirements of Section 529 of the Internal Revenue Code of 1986 or other applicable federal law.

(b) The board shall furnish an additional statement complying with subsection (a) of this Code section to an account owner or beneficiary on written request. The board may charge a reasonable fee for each statement furnished under this subsection.

(c) The board shall prepare or cause to be prepared an annual report setting forth in appropriate detail an accounting of the funds and a description of the financial condition of the plan at the close of each fiscal year. Such report shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives. In addition, the board shall make the report available to account owners or account contributors of savings trust agreements. The accounts of the trust fund shall be subject to annual audits by the state auditor or his or her designee. (Code 1981, § 20-3-638, enacted by Ga. L. 2001, p. 76, § 1; Ga. L. 2002, p. 372, § 13.)

**Editor's notes.** — Ga. L. 2002, p. 372, § 15(b), not codified by the General Assembly, provides that this Act shall be applicable to all taxable years beginning on or after January 1, 2002.

**U.S. Code.** — Section 529 of the Internal Revenue Code, referred to in paragraph (a)(3), is codified in Title 26 of the United States Code.

### **20-3-639. Plan not designed as promise or guarantee of educational benefits.**

This article is not a promise or guarantee that any beneficiary will be:

(1) Admitted to any institution of higher education;

(2) Admitted to a particular institution of higher education after admission;

(3) Allowed to continue enrollment at an institution of higher education; or

(4) Graduated from an institution of higher education. (Code 1981, § 20-3-639, enacted by Ga. L. 2001, p. 76, § 1.)

**20-3-640. No guarantee of full coverage of educational expenses.**

Nothing in this article or in any savings trust agreement entered into pursuant to this article shall be construed as a promise or guarantee by the state or any agency or instrumentality of the state that either qualified higher education expenses in general or any specific qualified higher education expense shall be covered in full by contributions or earnings on any savings trust account. Savings trust accounts and agreements entered into pursuant to this article are not guaranteed by the full faith and credit of the State of Georgia. (Code 1981, § 20-3-640, enacted by Ga. L. 2001, p. 76, § 1.)

**20-3-641. Effect of account in determining eligibility for state aid.**

Notwithstanding any state law to the contrary, no moneys on deposit in any savings trust account shall be considered an asset of the parent, guardian, or student for purposes of determining an individual's eligibility for a need based grant, need based scholarship, or need based work opportunity offered or administered by any state agency except as may be required by the funding source of such financial aid. (Code 1981, § 20-3-641, enacted by Ga. L. 2001, p. 76, § 1.)

**20-3-642. Records not open to public inspection; duration.**

(a) The provisions of Article 4 of Chapter 18 of Title 50 notwithstanding, the following records, or portions thereof, shall not constitute public records and shall not be open to inspection by the general public:

(1) Completed savings trust account applications, executed savings trust account agreements, and savings trust account numbers;

(2) All wiring or automated clearing house transfer of funds instructions;

(3) Records of savings trust account transactions and savings trust account analysis statements received or prepared by or for the plan;

(4) All bank account numbers in the possession of the plan and any record or document containing such numbers;

(5) All proprietary computer software in the possession or under the control of the plan; and

(6) All security codes and procedures related to physical, electronic, or other access to any savings trust account or the trust fund, its systems, and its software.

(b) For a period from the date of creation of the record until the end of the calendar quarter in which the record is created, the following records, or portions thereof, of the trust fund shall not constitute public records and shall not be open to inspection by the general public:

(1) Investment trade tickets; and

(2) Bank statements.

(c) The restrictions of subsections (a) and (b) of this Code section shall not apply to access:

(1) Required by subpoena or other legal process of a court or administrative agency having competent jurisdiction in legal proceedings where the State of Georgia or the plan is a party;

(2) In prosecutions or other court actions to which the State of Georgia or the plan is a party;

(3) Given to federal or state regulatory or law enforcement agencies;

(4) Given to any person or entity in connection with a savings trust account to which such person or entity is the account owner or given to any person in connection with a savings trust account of which such person is the beneficiary; or

(5) Given to the board or any member, employee, or contractor thereof for use and public disclosure in the ordinary performance of its duties pursuant to this article. (Code 1981, § 20-3-642, enacted by Ga. L. 2001, p. 76, § 1; Ga. L. 2002, p. 372, § 14; Ga. L. 2002, p. 415, § 20.)

**Editor's notes.** — Ga. L. 2002, p. 372, § 15(b), not codified by the General Assembly, provides that this Act shall be applicable to all taxable years beginning on or after January 1, 2002.



## ARTICLE 12

POSTSECONDARY EDUCATION GRANTS FOR FOSTER  
CHILDREN AND ADOPTED CHILDREN**20-3-660. Program of grants created; terms and conditions; applications; eligibility; duties of the Division of Family and Children Services; expenses and fees covered; report by the Education Coordinating Council.**

From funds appropriated by the General Assembly for such purpose, there is created a program of grants for the payment of postsecondary tuition, ancillary fees, and living expenses for Georgia foster children and adopted children. Such grants shall be subject to the following terms and conditions:

(1) Tuition, ancillary student fees, and the cost-of-living expenses for any undergraduate program of any Georgia public postsecondary institution, including all four-year and two-year colleges and universities and institutions of the Georgia Community and Technical College System, shall be paid for a Georgia foster or adopted child who is a full-time or part-time student if the student meets all entrance requirements and maintains academic eligibility while enrolled at the postsecondary institution and if:

(A) The student's family receives state funded adoption assistance under Code Section 49-5-8;

(B) The student is currently committed to the Division of Family and Children Services within the Department of Human Services under Code Section 15-11-55 and placed in a family foster home or is placed in accordance with Code Section 15-11-2;

(C) The student is in an independent living program and the placement is funded by the Division of Family and Children Services; or

(D) The student who is an adopted child was in the permanent legal custody of and placed for adoption by the Division of Family and Children Services following the child's fourteenth birthday. A student who meets the eligibility criteria of this subparagraph and lives outside this state at the time of application to a Georgia postsecondary institution may apply for the grant as though he or she were still a resident of this state;

(2) The student shall:

(A) Obtain the application for the grant through the Division of Family and Children Services; and

(B) Complete the Free Application for Federal Student Aid to determine the level of need and eligibility for state and federal financial aid programs. If the student's financial need for total cost of attendance, as defined in 20 U.S.C. Section 1087ll, exceeds the available funding from all sources, except loans and the work-study program under 42 U.S.C. Sections 2751-2756b, the foster care tuition grant shall be used to cover the excess assessed need for cost of attendance at the postsecondary institution;

(3) The student shall be eligible and remain eligible for the grant so long as:

(A) The student applies for entrance to the institution within three years of receipt of his or her high school diploma or general educational development (GED) diploma;

(B) The student maintains satisfactory academic progress as defined by the institution attended; and

(C) The student has not reached the age of 26;

(4) The Division of Family and Children Services shall:

(A) Advertise the availability of the program and ensure that the children and young adults leaving foster care, foster parents, and family services counselors are informed of the availability of the program and the application procedures;

(B) Provide grant applications to all students leaving foster care; and

(C) Report the number of students participating in the tuition grant program on October 1 of each year to the Office of Planning and Budget and the Office of the Child Advocate;

(5) Cost-of-living expenses and necessary fees shall be determined for this program by the institution in which the student enrolls. Cost-of-living may include but is not limited to room, board, books, fees, supplies, transportation fees, and a basic health care policy endorsed by the institution in which the student is enrolled;

(6) The Education Coordinating Council shall report nonidentifying data on graduation rates of students participating in the tuition grant program by November 30 each year to the Office of Planning and Budget and the Office of the Child Advocate; and

(7) Nothing in this Code section shall be construed to:

(A) Guarantee acceptance of or entrance into any postsecondary institution for a foster or adopted child;

(B) Limit the participation of a foster or adopted student in any other program of financial assistance for postsecondary education;

(C) Require any postsecondary institution to waive costs or fees relating to tuition, fees, room, and board;

(D) Restrict any postsecondary institution or the Division of Family and Children Services from accessing other sources of financial assistance, except loans, that may be available to a foster or adopted student; or

(E) Prevent the student from maintaining the grant if transferring to another public postsecondary institution in this state, provided that the student meets all of the requirements of the transferring and receiving institutions. (Code 1981, § 20-3-660, enacted by Ga. L. 2005, p. 479, § 1/HB 272; Ga. L. 2009, p. 8, § 20/SB 46; Ga. L. 2009, p. 453, § 2-2/HB 228.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2005, “Division of Family and Children Services” was substituted for “Department of Family and Children Services” throughout this Code

section and “within the Department of Human Resources” (now the Department of Human Services) was inserted in subparagraph (1)(B).



CHAPTER 4

VOCATIONAL, TECHNICAL, AND ADULT EDUCATION

| Article 1                     |   | Sec.       |  |
|-------------------------------|---|------------|--|
| Federal Aid                   |   | 20-4-20.   | Authority of Board of Regents of University System of Georgia unabridged.  |
| Sec.                          |   | 20-4-21.   | Tuition fees.  |
| 20-4-1.                       | Acceptance of federal act.  | 20-4-21.1. | (Repealed effective June 30, 2013) Nonlapsing revenue of institutions under the Technical College System of Georgia.                                   |
| 20-4-2.                       | Duties of State Board of Education in obtaining matching state and local funds.   | 20-4-22.   | Management and control of quick start program.   |
| 20-4-3.                       | Custodian for federal funds; payment upon order of State Board of Education.  | 20-4-23.   | Retention of nonstate funds by postsecondary technical school converted to state management.   |
| 20-4-4.                       | Employing teachers under federal act.   | 20-4-24.   | Use of personnel by local units of administration.   |
| Article 2                     |   | 20-4-25.   | Membership in retirement system — Professional personnel employed on or after July 1, 1985, and nonprofessional personnel employed after July 1, 1987. |
| Technical and Adult Education |   | 20-4-26.   | Membership in retirement system — Employees of schools formerly operated by local board of education or area postsecondary technical education board.  |
| 20-4-10.                      | State Board of the Technical College System of Georgia established; members; officers.  | 20-4-27.   | Service classification.  |
| 20-4-11.                      | Powers of board.  | 20-4-28.   | Compensation of employees of schools appointed after July 1, 1987, or when system assumes governance.  |
| 20-4-12.                      | Expenses and mileage allowance.   | 20-4-29.   | Salary and benefit plan of employees of schools formerly operated by local board of education or area postsecondary technical education board.         |
| 20-4-13.                      | Meetings.   | 20-4-30.   | Compensation of classified employees electing to become unclassified.  |
| 20-4-14.                      | Technical College System of Georgia established; powers and duties.   | 20-4-31.   | Initial sick and annual leave.   |
| 20-4-14.1.                    | Transfer of public library functions and powers to the department; transfer of personnel and assets; retirement; funding of transferred programs; succession of rules and regulations [Repealed]. | 20-4-32.   | Accrual of sick leave.   |
| 20-4-15.                      | Establishment of adult literacy programs; eligibility; office of adult literacy.  | 20-4-33.   | Days off with pay; accrual of annual leave.  |
| 20-4-16.                      | Funding.  | 20-4-34.   | Rights and benefits of former employees of State Board of Postsecondary Vocational Education.  |
| 20-4-17.                      | Agencies to receive federal funds; transfer of personnel to Department of Technical and Adult Education, now known as Technical College System of Georgia.  |            |  |
| 20-4-18.                      | Management and control of adult literacy and postsecondary technical education programs and schools.  |            |  |
| 20-4-19.                      | Conformity to board standards, policies, and procedures.  |            |  |

- Sec.  
20-4-35. Reduction in force policy.  
20-4-36. Cooperation with study to identify problems in obtaining alternative formats for textbooks used by students with disabilities.  
20-4-37. Office of College and Career Transitions; powers and duties.

**Article 3**

**Industry Services Training Program**

- 20-4-40. Program for quick start training established.  
20-4-41. Extent and nature of training to be offered.  
20-4-42. Administration of program.  
20-4-43. Agreements for local facilities and employees; contracts or agreements with private firms.

**Administrative rules and regulations.** — Secondary vocational education, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Chapter 160-4-3.

- Sec.  
20-4-44. Qualifications of employees.  
20-4-45. Equipment procurement and use.  
20-4-46. Standards, rules, and regulations.  
20-4-47. Acceptance of federal and private grants.

**Article 4**

**Proprietary Schools**

20-4-60 through 20-4-79 [Repealed].

**Article 5**

**Tuition Fees to Supplement State and Local Funding**

- 20-4-100. Rules and regulations; authority to charge tuition fees; use of fees; effect on entitlement to other funds [Repealed].

Vocational evaluation, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Chapter 160-4-10.

**OPINIONS OF THE ATTORNEY GENERAL**

**Students included in computation of “average daily attendance”.** — High school student who is assigned to a vocational education program operated by a county or independent school system remains in the common or public schools operated by the system and may therefore

continue to be included in the county or independent system’s computations of “average daily attendance” for purposes of its general allotment of teachers and other professional personnel. 1963-65 Op. Att’y Gen. p. 775.

**RESEARCH REFERENCES**

**ALR.** — What is common or public school within contemplation of constitutional or statutory provisions, 113 ALR 697.

Tort liability of public schools and institutions of higher learning for accidents associated with chemistry experiments,

shopwork, and manual or vocational training, 35 ALR3d 758.

Liability of private vocational or trade school for fraud or misrepresentations inducing student to enroll or pay fees, 85 ALR4th 1079.

## ARTICLE 1

### FEDERAL AID

**Cross references.** — Implementation of vocational rehabilitation grants under Ga. Const. 1983, Art. III, Sec. VI, Para. II.

#### 20-4-1. Acceptance of federal act.

The State of Georgia accepts the provisions of an act of the Congress of the United States approved February 23, 1917 (20 U.S.C.A. Section 11, et seq.; c. 114, Section 1, 39 Stat. 929), the caption of which act is as follows: "An act to provide for the promotion of vocational education; to provide for cooperation with the states in the promotion of such education in agriculture and the trades and industries; to provide for cooperation with the states in the preparation of teachers of vocational subjects; and to appropriate money and regulate its expenditure, and for other purposes," expressly including such Sections 1, 2, 3, and 4 of such act and the provisions thereunder and appropriations therefor, to be used according to and as provided in such act. (Ga. L. 1917, p. 200, § 1; Ga. L. 1919, p. 288, § 178; Code 1933, § 32-2201.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1996, a comma was inserted following "Section 11" near the beginning.

### JUDICIAL DECISIONS

**Cited in** *Worth v. Board of Pub. Educ.*, 177 Ga. 166, 170 S.E. 77 (1933).

### OPINIONS OF THE ATTORNEY GENERAL

**State Board of Education may administer federal funds appropriated for the promotion and development of vocational education.** 1945-47 Op. Att'y Gen. p. 196.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 349 et seq.

#### 20-4-2. Duties of State Board of Education in obtaining matching state and local funds.

In matching the federal appropriations referred to in Code Section 20-4-1, the State Board of Education is directed to take advantage of whatever appropriations the state makes to schools and the teacher training department of the University of Georgia in order to secure these funds under the regulations provided by the secretary of educa-



tion and also to take advantage, when permitted by the secretary of education, of any appropriations made by any municipality or county to any school of vocational character. To make up any deficiencies that may occur, the state board is authorized to use each year, so far as may be necessary, an amount equal to one-half of the federal appropriation from any funds not otherwise appropriated in the state treasury. So far as possible, the state board shall encourage municipal and county educational boards to meet the conditions and secure advantages of this federal appropriation. (Ga. L. 1917, p. 200, § 8; Ga. L. 1919, p. 288, § 180; Code 1933, § 32-2202.)

RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 119 et seq., 357 et seq.

**C.J.S.** — 78A C.J.S., Schools and School Districts, § 729.

**20-4-3. Custodian for federal funds; payment upon order of State Board of Education.**

The Office of the State Treasurer shall be the custodian of any money received by the state from the federal government under this article; and it shall be its duty to collect such money and pay it out upon the order of the State Board of Education as evidenced by its warrant. (Ga. L. 1917, p. 200, § 5; Ga. L. 1919, p. 288, § 182; Ga. L. 1931, p. 7, § 95; Code 1933, § 32-2203; Ga. L. 1972, p. 1015, § 408B; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

**The 2010 amendment**, effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fis-

cal Services” near the beginning of this Code section.

JUDICIAL DECISIONS

**Cited** in *Lewis v. Board of Educ.*, 183 Ga. 687, 189 S.E. 233 (1936).

RESEARCH REFERENCES

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, §§ 263, 346.

**C.J.S.** — 78A C.J.S., Schools and School Districts, §§ 730, 733.

**20-4-4. Employing teachers under federal act.**

Any county board of education may employ and pay agricultural teachers and home economics teachers when employed in the consolidated schools of the county under provisions of the Vocational Education Act of Congress of February 23, 1917 (20 U.S.C.A. Section 11, et seq.; c. 114, Section 1, 39 Stat. 929), and this article. (Ga. L. 1922, p. 81, § 2; Code 1933, § 32-2205.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1996, a comma was inserted following “Section 11” near the end.

### JUDICIAL DECISIONS

**Cited** in *Gard v. Board of Educ.*, 183 Ga. 82, 187 S.E. 109 (1936).

### RESEARCH REFERENCES

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 308 et seq.

## ARTICLE 2

### TECHNICAL AND ADULT EDUCATION

**Editor's notes.** — Ga. L. 1988, p. 1252, § 2, effective July 1, 1988, repealed the Code sections formerly codified at this article and enacted the current article. The former article, which dealt with state area trade schools, consisted of Code Sections 20-4-20 through 20-4-26 and was based on Ga. L. 1945, p. 229, §§ 1-6; Ga.

L. 1976, p. 506, § 1; Ga. L. 1981, Ex. Sess., p. 8 (Code Enactment Act).

**Administrative rules and regulations.** — Grant programs, Official Compilation of the Rules and Regulations of the State of Georgia, Grants of Georgia Department of Technical and Adult Education, Chapter 668-1.

### OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarities of the statutory provisions, opinions under former Ga. L. 1945, p. 229, §§ 1-6; Ga. L. 1976, p. 506, § 1; and Ga. L. 1981, Ex. Sess., p. 8 (Code Enactment Act), which were subsequently repealed but were succeeded by provisions in this article, are included in the annotations for this article.

**Area vocational schools classified as “schools”.** — While such terms as “school” and “educational institution” are descriptive terms and are not really susceptible of precise definition, the area vocational schools maintained and operated by the State Board of Education would be

classified as “schools” under any definition of the term. 1967 Op. Att’y Gen. No. 67-14 (decided under former Ga. L. 1945, p. 229).

**State trade and technical school not subject to taxation.** — State trade and technical school is legal, providing that such schools are set up for and on behalf of the state and providing for their operation from state appropriations makes such a school an instrumentality of the state, and, as such, the school is not subject to state or federal taxation. 1945-47 Op. Att’y Gen. p. 195 (decided under former Ga. L. 1945, p. 229).

### 20-4-10. State Board of the Technical College System of Georgia established; members; officers.

(a) There is established the State Board of the Technical College System of Georgia, formerly known as the State Board of Technical and Adult Education, consisting of not fewer than one member from each congressional district and nine at-large members who shall be appointed by the Governor and confirmed by the Senate for five-year

terms. Board members in office on June 30, 2000, shall serve out the remainder of their respective terms. Upon expiration of those terms, the Governor shall appoint seven successors to two-year terms, six successors to three-year terms, and six successors to five-year terms. All subsequent appointments shall be for regular five-year terms. Members shall represent business, industry, or economic development. The board shall elect from its members a chairperson, vice chairperson, and such other officers as are considered necessary, each to serve for two-year terms. Officers may be elected to succeed themselves. Members shall serve until their successors are appointed; however, in the event of a vacancy on the board because of death, resignation, or removal for any reason other than expiration of a member’s term, the Governor shall fill such vacancy in the same manner as the original appointment and the person so appointed shall serve for the unexpired term of office.

(b) As used in this article, the term “state board” means the State Board of the Technical College System of Georgia. (Code 1981, § 20-4-10, enacted by Ga. L. 1988, p. 1252, § 2; Ga. L. 1989, p. 1096, § 1; Ga. L. 1990, p. 1903, § 5; Ga. L. 2000, p. 618, § 82; Ga. L. 2011, p. 632, § 1/HB 49.)

**The 2011 amendment**, effective July 1, 2011, in subsection (a), in the first sentence, substituted “established the State Board of the Technical College System of Georgia, formerly known as the” for “established a”, and added a comma following “Adult Education”; and substituted “State Board of the Technical College Sys-

tem of Georgia” for “State Board of Technical and Adult Education” at the end of subsection (b).

**Editor’s notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

### 20-4-11. Powers of board.

The State Board of the Technical College System of Georgia shall be empowered to:

- (1) Provide for a comprehensive program of literacy, career, occupational, and technical education for adults and out-of-school youths. Such program shall promote the economic well-being of Georgia citizens by providing high quality postsecondary technical and adult literacy education programs, services, and activities which are easily accessible by all segments of the adult population who need and can benefit from training, retraining, or upgrade training for employment and which is highly responsive to individuals needing to achieve basic, general, and specialized literacy. Such program shall also provide a system of schools which is a full partner in the economic development and expansion of the state’s economic base and represents a significant asset in the attraction of new business and industry to the state and the expansion of existing business and industry in the state;



(2) Establish and promulgate standards, rules, regulations, and policies for the orderly and efficient operation of the Technical College System of Georgia and of postsecondary technical schools, programs, and institutions, including those which it operates and those operated by local and area boards of education, and for the orderly and efficient provision of adult literacy education programs:

(A) Such standards, rules, regulations, and policies may include but not be limited to developing criteria for the recruitment, employment and retention of faculty and staff; recruitment of students and student admissions; program approval, salaries and salary supplements, tuition, and fees; eligibility of public and private providers of adult literacy education programs for state and federal funds, levels of funding for such providers and associated levels of required provider matching funds; long and short-term planning to include facilities, program standards, and outcome competencies; establishing provisions for appropriate recognition of program achievement below the baccalaureate level; soliciting resources from the private sector; industry and education partnerships; research and data collection; representing postsecondary technical and adult literacy education in all forums; and such other functions necessary to assure an effective and efficient state-wide system of postsecondary technical schools and adult literacy education with leadership at the state level; and

(B) For adult literacy programs, the state board shall establish:

(i) One set of standards for public adult literacy providers and another set of standards for private adult literacy providers. The public standards shall be more comprehensive and detailed than the private standards; and

(ii) Standards and requirements for the attainment of a high school equivalency certificate which shall be comparable to the high school graduation requirements set by the State Board of Education for public school programs and which shall also be at least equal to the requirements established for a general educational development (GED) diploma. The State Board of the Technical College System of Georgia shall also adopt and administer an instrument to measure the level of achievement required to obtain a high school equivalency certificate;

(3) Select and employ a commissioner of the Technical College System of Georgia and fix his compensation, duties, and responsibilities consistent with the provisions of this article. The commissioner shall:

(A) Exercise the overall supervision and direction of the Technical College System of Georgia and shall serve at the pleasure of the

State Board of the Technical College System of Georgia. The State Board of the Technical College System of Georgia may assign and delegate to the commissioner such responsibilities, powers, and duties as the State Board of the Technical College System of Georgia may deem proper and appropriate, including the authority to execute on behalf of the State Board of the Technical College System of Georgia legal documents and other filings; and

(B) Be responsible for implementing the policies of the State Board of the Technical College System of Georgia and for the day-to-day operations of the Technical College System of Georgia. The commissioner shall develop job descriptions for the necessary administrative, programmatic, liaison, and clerical personnel and shall, at his discretion, hire staff necessary for the operation of the Technical College System of Georgia;

(4) Establish an Adult Literacy Advisory Committee to advise and assist the state board in developing goals, objectives, policies, methods, and standards for the delivery of adult literacy programs. This committee will further assist the state board by communicating and facilitating the adoption of such goals, objectives, policies, methods, and standards by the organizations and groups which its members represent. Each member of this committee shall be reimbursed for actual expenses incurred in performing his or her duties as provided in Code Section 20-4-12 for state board members;

(5) Establish local boards of directors for postsecondary technical schools which the state board operates to assist the state board in carrying out its mission. The purpose of such boards shall be to facilitate the delivery of programs, services, and activities as directed by the state board. The state board shall establish the number of members of each local board and the terms of office thereof, provided that all members of any board shall represent the geographic area which the institution serves as defined by the state board; provided, further, that all members shall represent business, industry, or economic development. The state board shall be empowered to establish and approve all bylaws and actions of all local boards of directors. Each local board of directors shall meet at least eight times per year. Each member of such local boards of directors shall be reimbursed for expenses incurred in performing his or her duties as provided in Code Section 20-4-12 for state board members;

(6) Establish service delivery areas as required to carry out the state board's mission in delivering, supervising, funding, administering, coordinating, and monitoring adult literacy education;

(7) Establish a local adult literacy advisory committee for each service delivery area which it establishes. The purpose of each such

committee shall be to identify and recommend goals, objectives, target groups, programs, curricula, and delivery methods for adult literacy programs; to develop and recommend associated short and long-range plans; to recommend a fiscal agent; and to perform other activities as may be directed by the state board to provide for the most effective and efficient delivery of adult literacy programs in the local committee's service delivery area. The state board shall establish the number of members of each local committee and the terms of office thereof, provided that all members of any local committee shall represent the area defined by the state board to be the adult literacy service delivery area; provided, further, that the membership of each local committee shall include local civic leaders and representatives of adult literacy providers, business, and industry. The state board shall be empowered to establish and approve all bylaws and actions of all local committees. Each local committee shall meet at least four times per year. Each member of such local committee shall be reimbursed for expenses incurred in performing his or her duties as provided in Code Section 20-4-12 for state board members;

(8) Establish a plan whereby employees of the Technical College System of Georgia may, through payroll deductions, make voluntary contributions to the Georgia Fund for Technical and Adult Education, Inc., provided that such plan shall:

(A) Be consistent with the requirements of subsection (b) of Code Section 45-20-53, Code Section 45-20-54, Code Section 45-20-55, and Code Section 45-20-56; and

(B) Not interfere with the right of employees of the Technical College System of Georgia to make voluntary contributions to other charitable organizations pursuant to the provisions of Article 3 of Chapter 20 of Title 45;

(9) Prescribe criteria, policies, and standards deemed necessary for the effective implementation of a program financed wholly or partially from appropriations from the Lottery for Education Account and established for the purpose of providing teachers the necessary training in the use and application of computers and advanced electronic instructional technology to implement interactive learning environments in the classroom and to access the state-wide distance learning network. Such program shall include the expenditure of funds appropriated for such purpose to defray the costs associated with repairing and maintaining advanced electronic instructional technology;

(10) Approve a request by a postsecondary technical school or institution governed under this chapter to be named a technical college upon the approval and granting of occupational



degree-granting status by the State Board of the Technical College System of Georgia and upon receiving accreditation by the Commission on Colleges of the Southern Association of Schools, the Council on Occupational Education, or any other appropriate accrediting agency approved by the United States Secretary of Education. The use of the name technical college shall not alter the governance of the technical school or institution as established under this chapter nor shall it abridge the authority of the Board of Regents of the University System of Georgia under the Constitution of this state; and

(11) Submit an annual request for funding to the Office of Planning and Budget as prescribed in Code Sections 45-12-78 and 45-12-79. Such submission shall reflect a request for funds pursuant to an enrollment driven formula that reflects funds for direct instructional costs to include salaries and instructional supplies and equipment, funds for indirect support, maintenance and operation, staff and professional development, and media services. Such funding shall be subject to appropriation by the General Assembly. (Code 1981, § 20-4-11, enacted by Ga. L. 1988, p. 1252, § 2; Ga. L. 1991, p. 1800, § 1; Ga. L. 1996, p. 1603, § 8; Ga. L. 2000, p. 618, § 83; Ga. L. 2001, p. 4, § 20; Ga. L. 2008, p. 335, § 2/SB 435; Ga. L. 2011, p. 632, § 3/HB 49; Ga. L. 2012, p. 775, § 20/HB 942.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “State Board of Technical and Adult Education” throughout this Code section.

**The 2012 amendment**, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted “commissioner of the Technical College System of Georgia” for “commissioner of technical and adult education” in the introductory language of paragraph (3).

**Code Commission notes.** — Pursuant

to Code Section 28-9-5, in 1988, a comma was added following “general” near the end of the second sentence of paragraph (1).

Pursuant to Code Section 28-9-5, in 1991, “Establish” was substituted for “To establish” at the beginning of paragraph (8).

**Editor’s notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘A Plus Education Reform Act of 2000.’”

### JUDICIAL DECISIONS

**Administrators violated student’s due process rights.** — In a nursing school student’s 42 U.S.C. § 1983 suit alleging that the college’s administrators violated the student’s U.S. Const., amend. XIV procedural due process rights, the student, in accordance with admission

practices outlined in the State Board of Technical and Adult Education Policy and Procedures Manual § V.B.I, pursuant to O.C.G.A. § 20-4-11(2), had a protected property interest in attending the college. *Castle v. Marquardt*, 632 F. Supp. 2d 1317 (N.D. Ga. 2009).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 78 et seq., 349 et seq.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 103 et seq.

**20-4-12. Expenses and mileage allowance.**

The members of the State Board of the Technical College System of Georgia who are in state employment shall serve without compensation but, subject to fund availability, shall be reimbursed by the state department in which employed for all necessary expenses that may be incurred in the performance of their duties under this article in accordance with state travel regulations promulgated by the State Accounting Office in the same manner that state employees are reimbursed. For those State Board of the Technical College System of Georgia members who are not in state employment, the expense and mileage allowance shall be the same as that authorized for the General Assembly and shall be payable, subject to fund availability, by the State Board of the Technical College System of Georgia. (Code 1981, § 20-4-12, enacted by Ga. L. 1988, p. 1252, § 2; Ga. L. 2005, p. 694, § 28/HB 293; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2011, p. 632, § 3/HB 49; Ga. L. 2012, p. 446, § 2-27/HB 642.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “State Board of Technical and Adult Education” throughout this Code section.

**The 2012 amendment**, effective July 1, 2012, substituted “that state employees are” for “that employees of the State Personnel Administration are” near the end of the first sentence of this Code section.

**Editor’s notes.** — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel,

equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

**20-4-13. Meetings.**

The State Board of the Technical College System of Georgia shall meet monthly; provided, however, that the board may suspend up to two such meetings per year depending upon the press of business. Additional meetings may be called by the chairperson or at the request of three or more of the members. The State Board of the Technical College System of Georgia shall adopt procedures for the conduct of its activities. (Code 1981, § 20-4-13, enacted by Ga. L. 1988, p. 1252, § 2; Ga. L. 2006, p. 337, § 1/SB 436; Ga. L. 2011, p. 632, § 3/HB 49.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for

“State Board of Technical and Adult Education” twice in this Code section.

**20-4-14. Technical College System of Georgia established; powers and duties.**

(a) There is established the Technical College System of Georgia, formerly known as the Department of Technical and Adult Education.

(b) The system shall exercise state level leadership, management, and operational control over schools, programs, and services authorized in this article and Article 3 of this chapter.

(c) The Technical College System of Georgia shall be empowered to:

(1) Approve occupational programs below the baccalaureate level; provided, however, any courses to be transferable to units of the University System of Georgia shall be approved by the Board of Regents of the University System of Georgia;

(2) Receive and hold title to property, equipment, money, and materials;

(3) Operate instructional services projects, also known as student live work projects, in those occupational areas which require specific skills or competency mastery that can best be obtained or demonstrated in a laboratory environment with clients, real items, or projects, including, but not limited to, carpentry, child care, aviation, welding, and automotive repair, and, in connection with such projects:

(A) Receive, retain, and utilize donations, fees, and moneys generated as a result of the sale of such services or projects;

(B) Retain any unexpended student live work funds from year to year;

(C) Expend retained student live work funds for any student live work project or for the benefit of instructional programs at the technical institute; and

(D) Acquire, improve, and sell real or personal property in connection with student live work projects, provided that all acquisitions and sales of real property in connection with student live work projects shall be approved by the state board;

(4) Solicit and receive funds from the general public, corporate underwriters, and foundations;

(5) Contract with other state, federal, or local public or private schools and other entities, individuals, or other legal entities for the provision of programmatic or administrative services or activities the system deems necessary; and

(6) Administer and supervise programs in accordance with standards, rules, regulations, and policies of the State Board of the



Technical College System of Georgia. (Code 1981, § 20-4-14, enacted by Ga. L. 1988, p. 1252, § 2; Ga. L. 1996, p. 784, § 1; Ga. L. 2008, p. 335, § 1/SB 435; Ga. L. 2011, p. 632, § 3/HB 49; Ga. L. 2012, p. 775, § 20/HB 942.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “State Board of Technical and Adult Education” in paragraph (c)(6).

**The 2012 amendment**, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted “sys-

tem” for “department” in subsection (b) and paragraph (c)(5).

**Administrative rules and regulations.** — Area school program, Official Compilation of the Rules and Regulations of the State of Georgia, Grants of Georgia Department of Technical and Adult Education, Grant Programs, Sec. 668-1-.01.

## JUDICIAL DECISIONS

**Cited in** Coosa Valley Tech. College v. West, 299 Ga. App. 171, 682 S.E.2d 187 (2009).

## OPINIONS OF THE ATTORNEY GENERAL

**Editor’s notes.** — In light of the similarities of the statutory provisions, an opinion under former law is included in the annotations for this Code section.

**Contract for skilled services negotiable, or let by competitive bid.** — Contract for necessary skilled services in

repairing and maintaining school equipment and installations may be negotiated or let by competitive bid by the State Board of Education as may be deemed necessary and advisable under the particular circumstances. 1960-61 Op. Att’y Gen. p. 179 (decided under former law).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, §§ 45, 78, 86 et seq., 110, 114.

**C.J.S.** — 78 C.J.S., Schools and School

Districts, §§ 103 et seq., 507 et seq. 78A C.J.S., Schools and School Districts, § 726.

### 20-4-14.1. Transfer of public library functions and powers to the department; transfer of personnel and assets; retirement; funding of transferred programs; succession of rules and regulations.

Repealed by Ga. L. 2000, p. 618, § 84, effective July 1, 2000.

**Editor’s notes.** — This Code section was based on Code 1981, § 20-4-14.1, enacted by Ga. L. 1996, p. 167, § 5.

### 20-4-15. Establishment of adult literacy programs; eligibility; office of adult literacy.

(a) For the purposes of this article, literacy means a degree of proficiency in reading, writing, and other communication skills; in

computation; and in reasoning that enables an individual to adapt to technological and other changes in society, compete in the job market, develop a sense of self-worth, and participate in the democratic process.

(b) The State Board of the Technical College System of Georgia shall establish adult literacy programs which provide for the attainment of reading, writing, and computational skills at the basic, general, and specialized levels of literacy. The state board shall determine the specific competencies concerning the skills and knowledge needed for each of the three levels of literacy; provided, however, that competencies at the specialized level contain the skills needed to qualify for a high school equivalency certificate.

(c) There is established an office of adult literacy which shall report directly to the commissioner. The office of adult literacy shall provide programs for the effective and efficient education of all Georgia adults eligible under the provisions of this Code section, including persons with disabilities and those for whom English is a second language. Subject to the availability of funding, all levels of literacy programs defined by this article shall be provided in each service delivery area to any eligible individual who requests them. With the ultimate goal of the elimination of illiteracy in the state, priority shall be given to providing all eligible adults with the opportunity to attain a general level of literacy.

(d) Individuals shall be eligible for adult literacy services who comply with other eligibility and attendance requirements as adopted by the state board and who:

- (1) Are high school graduates or have high school equivalency certificates and who are deficient in one or more areas of competency offered by adult literacy programs; provided, however, that no person shall be eligible for a high school equivalency certificate who has a high school diploma; or
- (2) Are at least 16 years of age and are not high school graduates but who are capable of attaining basic literacy skills as determined by policies established by the state board; provided, however, that an individual who is 16 or 17 years of age who has not graduated from high school shall present documented evidence that his or her school system has been notified that he or she has withdrawn from school. (Code 1981, § 20-4-15, enacted by Ga. L. 1988, p. 1252, § 2; Ga. L. 1995, p. 1302, § 15; Ga. L. 2011, p. 632, § 3/HB 49.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “State Board of Technical and Adult Edu-

cation” at the beginning of the first sentence of subsection (b).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1988, a comma

was inserted after "writing" in subsection (a).

### 20-4-16. Funding.

(a) Any other Code section of this article to the contrary notwithstanding, the State Board of the Technical College System of Georgia shall annually determine the amount of funds needed to provide adult literacy and postsecondary technical education programs for businesses, industries, adults, and out-of-school youths and shall annually request that the Governor recommend that the General Assembly make such appropriations as are needed.

(b) Any other Code section of this article to the contrary notwithstanding, the Technical College System of Georgia is authorized to provide funds, appropriated by the General Assembly for this purpose, to local units of administration, as defined in Code Section 20-2-242, and to other state, regional, local, and private agencies to be used for adult literacy, career, occupational, and technical education programs.

(c) Adult literacy providers eligible to receive funds from the state board shall consist of those public and private entities which meet applicable public or private standards as determined by the state board. Such providers may include, but are not limited to, public and private schools, postsecondary technical schools, public and private colleges and universities, public libraries, community education programs, or businesses and industries. All public providers must meet public standards pursuant to Code Section 20-4-11 to be eligible to receive funds from the state board. Private providers may choose to meet either private or public standards pursuant to Code Section 20-4-11 and shall be eligible to receive funds from the state board in accordance with the standards which they meet. (Code 1981, § 20-4-16, enacted by Ga. L. 1988, p. 1252, § 2; Ga. L. 2008, p. 335, § 2/SB 435; Ga. L. 2011, p. 632, § 3/HB 49.)

**The 2011 amendment**, effective July 1, 2011, substituted "State Board of the Technical College System of Georgia" for "State Board of Technical and Adult Education" in subsection (a).

**Administrative rules and regula-**

**tions.** — Adult literacy grants, Official Compilation of the Rules and Regulations of the State of Georgia, Grants of Georgia Department of Technical and Adult Education, Grant Programs, Sec. 668-1-.02.

### 20-4-17. Agencies to receive federal funds; transfer of personnel to Department of Technical and Adult Education, now known as Technical College System of Georgia.

(a) The Department of Education is designated as the sole state agency to receive federal funds allotted to Georgia under acts of Congress appropriating federal funds for career, occupational, or tech-



nical education; provided, however, that those funds appropriated for the operation and management of postsecondary technical, adult, and industrial programs shall be placed under the jurisdiction and control of the Department of Technical and Adult Education, now known as the Technical College System of Georgia; provided, further, a proportionate share of those federal funds appropriated for planning, evaluation, program improvement, and other administrative and discretionary purposes shall be placed under the jurisdiction and control of such board. Those personnel positions authorized for fiscal year 1986 for the operation and management of postsecondary technical schools and adult centers, as well as a proportionate share of those positions authorized for fiscal year 1986 for planning, evaluation, program improvement, and other administrative and discretionary purposes, shall be transferred to the Technical College System of Georgia. Such employees shall retain all existing rights under the Employees' Retirement System of Georgia, the Teachers Retirement System of Georgia, and the rules of the State Personnel Board.

(b) The Department of Technical and Adult Education, now known as the Technical College System of Georgia, is designated as the sole state agency to receive federal funds allotted to Georgia under acts of Congress appropriating federal funds for adult literacy education programs. Those personnel positions authorized for fiscal year 1988 solely for the management, coordination, planning, evaluation, administration, and program improvement of adult literacy education programs, and associated office equipment and furniture, shall be transferred to the Department of Technical and Adult Education, now known as the Technical College System of Georgia. All officials and employees in such positions are also transferred to the Department of Technical and Adult Education, now known as the Technical College System of Georgia, and shall retain all existing rights under the Employees' Retirement System of Georgia, the Teachers Retirement System of Georgia, and the rules of the State Personnel Board. (Code 1981, § 20-4-17, enacted by Ga. L. 1988, p. 1252, § 2; Ga. L. 2008, p. 335, § 2/SB 435; Ga. L. 2009, p. 8, § 20/SB 46; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2010, p. 878, § 20/HB 1387; Ga. L. 2012, p. 446, § 2-28/HB 642.)

**The 2010 amendment**, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, inserted a comma following "now known as the Technical College System of Georgia" in two places in subsection (b).

**The 2012 amendment**, effective July 1, 2012, substituted "the rules of the State Personnel Board" for "the State Personnel Administration" in the last sentence of

subsections (a) and (b); and inserted "that" near the middle of the first sentence of subsection (a).

**Editor's notes.** — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of

Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, pro-

vides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

### OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarities of the statutory provisions, an opinion under former Code 1933, § 32-2220, which was subsequently repealed but was succeeded by provisions in this Code section, is included in the annotations for this Code section.

**Board authorized to receive reimbursement for costs of training veterans.** — State Board of Education is authorized to receive federal funds along with other donations, gifts, etc.; therefore, if

the board has been approved by the Veterans Education Council as an institution for providing related instruction for on-the-job-trainee veterans, the board is authorized by state law to receive funds from the Veterans Administration for reimbursing the costs incident to providing this related training which, under the approval tendered by the council, the board administers and supervises. 1945-47 Op. Att'y Gen. p. 201 (decided under former Code 1933, § 32-2220).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 357 et seq.

### 20-4-18. Management and control of adult literacy and postsecondary technical education programs and schools.

Subject to the provisions of Code Section 20-4-20, any other Code section of this article to the contrary notwithstanding, all decisions regarding the delivery of adult literacy and postsecondary technical education programs and services to business, industry, and individuals who are 16 years of age or older and who have completed or left the public schools, to include the awarding of high school equivalency certificates, shall be made by the Technical College System of Georgia. Commensurate with this authority, the system shall exercise state level management and operational control over adult literacy education programs, postsecondary technical schools, and adult vocational centers. (Code 1981, § 20-4-18, enacted by Ga. L. 1988, p. 1252, § 2; Ga. L. 2008, p. 335, § 2/SB 435.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2008, "system" was substituted for "department" near the end of this Code section.

### 20-4-19. Conformity to board standards, policies, and procedures.

The adult literacy education programs operated by the Department of Corrections shall conform to the standards, regulations, policies, and

procedures of the State Board of the Technical College System of Georgia; provided, however, that the Department of Corrections shall give priority to complying with the standards, regulations, policies, and procedures promulgated by the American Correctional Association and the Correctional Education Association where any conflicts shall arise. (Code 1981, § 20-4-19, enacted by Ga. L. 1988, p. 1252, § 2; Ga. L. 2011, p. 632, § 3/HB 49.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “State Board of Technical and Adult Education” near the beginning of this Code section.

**20-4-20. Authority of Board of Regents of University System of Georgia unabridged.**

Nothing in this article shall abridge the authority of the Board of Regents of the University System of Georgia to establish or operate colleges or of local boards of education to operate schools. (Code 1981, § 20-4-20, enacted by Ga. L. 1988, p. 1252, § 2.)

**20-4-21. Tuition fees.**

(a) Any postsecondary technical school operated by a local board of education, an area postsecondary technical education board, or the Technical College System of Georgia shall be authorized to charge tuition fees in conformity with the rules and regulations promulgated by the State Board of the Technical College System of Georgia.

(b) Tuition fees charged by postsecondary technical schools operated by local boards of education, area postsecondary technical education boards, and the Technical College System of Georgia shall not be used to supplant existing state or local funding but shall be used for budgeted improvements not funded from existing state and local sources.

(c) The Technical College System of Georgia shall not withhold from any postsecondary technical school which charges tuition fees as authorized by this Code section any funds which would otherwise be payable by the Technical College System of Georgia to such school by contract, grant, or otherwise. (Code 1981, § 20-4-21, enacted by Ga. L. 1988, p. 1252, § 2; Ga. L. 2008, p. 335, § 2/SB 435; Ga. L. 2011, p. 632, § 3/HB 49.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “State Board of Technical and Adult Education” at the end of subsection (a).



**20-4-21.1. (Repealed effective June 30, 2013) Nonlapsing revenue of institutions under the Technical College System of Georgia.**

Revenue collected by any or all institutions under the Technical College System of Georgia from tuition, departmental sales or services, continuing education fees, technology fees, or indirect cost recoveries shall not lapse. The amount of revenue from tuition that shall not lapse under this Code section shall not exceed 15 percent of the tuition collected. This Code section shall stand repealed on June 30, 2013. (Code 1981, § 20-4-21.1, enacted by Ga. L. 2006, p. 686, § 3/HB 1294; Ga. L. 2008, p. 884, § 2-2/HB 1183; Ga. L. 2010, p. 576, § 2-2/HB 1128.)

**The 2010 amendment,** effective May 27, 2010, inserted “tuition,” in the first sentence, added the second sentence, and substituted “June 30, 2013” for “June 30, 2010” at the end of the last sentence.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2008, “Technical College System of Georgia” was substituted for “Department of Technical and Adult Education” in the first sentence.

**20-4-22. Management and control of quick start program.**

Any other Code section of this article to the contrary notwithstanding, the Technical College System of Georgia shall assume the management, operation, and control of the quick start program. The Department of Education shall transfer to the Technical College System of Georgia all existing staff, equipment, funds, property, and support functions and facilities currently under its control to accomplish this requirement, as set forth in this article. (Code 1981, § 20-4-22, enacted by Ga. L. 1988, p. 1252, § 2; Ga. L. 2008, p. 335, § 2/SB 435.)

**20-4-23. Retention of nonstate funds by postsecondary technical school converted to state management.**

Upon a postsecondary technical school’s conversion to state management, any unexpended nonstate funds that have been collected by, appropriated for, or otherwise earmarked for use by said postsecondary technical school operated by a local board of education or an area board shall remain with that school until expended for the intended purpose. (Code 1981, § 20-4-23, enacted by Ga. L. 1988, p. 1252, § 2.)

**20-4-24. Use of personnel by local units of administration.**

Except where prohibited by federal law, rules, or regulations or rules, regulations, or policies of the State Board of the Technical College System of Georgia, local units of administration shall be authorized to utilize personnel funded under this article to administer and coordinate community education programs and activities as well as to execute

their assigned duties and responsibilities related to adult literacy education. (Code 1981, § 20-4-24, enacted by Ga. L. 1988, p. 1252, § 2; Ga. L. 2011, p. 632, § 3/HB 49.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “State Board of Technical and Adult Education” near the beginning of this Code section.

**20-4-25. Membership in retirement system — Professional personnel employed on or after July 1, 1985, and nonprofessional personnel employed after July 1, 1987.**

Newly hired professional personnel employed for the first time by the Department of Technical and Adult Education, now known as the Technical College System of Georgia, on or after July 1, 1985, and all full-time nonprofessional personnel employed for the first time after July 1, 1987, by postsecondary technical schools governed by the Department of Technical and Adult Education, now known as the Technical College System of Georgia, shall become members of the Teachers Retirement System of Georgia as a condition of employment, if otherwise eligible under laws, rules, and regulations, unless such personnel elect membership in the Employees’ Retirement System of Georgia and are otherwise eligible under laws, rules, and regulations. Once such election is made by such personnel, the election is irrevocable during the tenure of employment with the Department of Technical and Adult Education, now known as the Technical College System of Georgia, or any postsecondary technical school governed thereby. Newly hired employees not eligible for membership in the Teachers Retirement System of Georgia or the Employees’ Retirement System of Georgia shall become members of the Public School Employees Retirement System as a condition of employment, if otherwise eligible. The State Board of the Technical College System of Georgia shall provide by regulation for informing prospective employees of the option provided for by this Code section so that such personnel may choose membership in the Teachers Retirement System of Georgia or the Employees’ Retirement System of Georgia or the Public School Employees Retirement System at the time of their employment. (Code 1981, § 20-4-25, enacted by Ga. L. 1988, p. 1252, § 2; Ga. L. 2008, p. 335, § 2/SB 435; Ga. L. 2009, p. 8, § 20/SB 46; Ga. L. 2011, p. 632, § 3/HB 49.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “State Board of Technical and Adult Education” in the last sentence of this Code section.

**20-4-26. Membership in retirement system — Employees of schools formerly operated by local board of education or area postsecondary technical education board.**

All full-time employees of a postsecondary technical school formerly operated by a local board of education or area postsecondary technical education board as of July 1, 1987, or the date which the Department of Technical and Adult Education, now known as the Technical College System of Georgia, assumes governance of the postsecondary technical school shall elect either to continue membership in the Teachers Retirement System of Georgia or to become members of the Employees' Retirement System of Georgia. Once such election is made by such personnel, the election is irrevocable during the tenure of employment with the Technical College System of Georgia or any postsecondary technical school governed thereby. All employees who are members of the Public School Employees Retirement System may elect to continue their membership in the Public School Employees Retirement System or to become members of the Teachers Retirement System of Georgia or the Employees' Retirement System of Georgia, if otherwise eligible under laws, rules, or regulations. (Code 1981, § 20-4-26, enacted by Ga. L. 1988, p. 1252, § 2; Ga. L. 2008, p. 335, § 2/SB 435; Ga. L. 2009, p. 8, § 20/SB 46.)

**20-4-27. Service classification.**

Employees of postsecondary technical schools governed by the Technical College System of Georgia shall serve in the unclassified service as defined by Code Section 45-20-2, provided that employees who serve in the classified service as defined by Code Section 45-20-2 may elect to remain in the classified service, and be governed by the provisions thereof; provided, further, that such employees who choose to be promoted to unclassified positions or who request to transfer to different positions or locations shall become members of the unclassified service. (Code 1981, § 20-4-27, enacted by Ga. L. 1988, p. 1252, § 2; Ga. L. 2008, p. 335, § 11/SB 435; Ga. L. 2009, p. 8, § 20/SB 46; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-29/HB 642.)

**The 2012 amendment**, effective July 1, 2012, substituted "service as defined by Code Section 45-20-2" for "service of the State Personnel Administration as defined by Code Section 45-20-6" in two places in this Code section.

**Editor's notes.** — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administra-

tion as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."



**20-4-28. Compensation of employees of schools appointed after July 1, 1987, or when system assumes governance.**

Employees of postsecondary technical schools governed by the system who are appointed after July 1, 1987, or after the date on which the system assumes governance of the postsecondary technical schools shall have their compensation established in conformity with state board policy in accordance with the state board compensation plan in effect at the time of employment. Such employees shall receive benefits in effect at the time of employment available to state employees employed by the system. The benefits and compensation for any employee may be amended, increased, or decreased at any time as the system deems appropriate. (Code 1981, § 20-4-28, enacted by Ga. L. 1988, p. 1252, § 2; Ga. L. 2008, p. 335, § 11/SB 435.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 183 et seq.      **C.J.S.** — 78 C.J.S., Schools and School Districts, § 450 et seq.

**20-4-29. Salary and benefit plan of employees of schools formerly operated by local board of education or area postsecondary technical education board.**

Employees of postsecondary technical schools formerly operated by a local board of education, or area postsecondary technical education board, shall as of July 1, 1987, or the date on which the system assumes governance of the postsecondary technical school make a choice as follows as to which salary and which benefit plan shall govern their employment:

(1) The salary earned as of July 1, 1987, or the date on which the system assumes governance of the postsecondary technical school, whichever is later, and the benefit plan in effect as of the same date, provided that such benefits can be obtained for comparable or less cost by the system. If such benefits cannot be obtained for comparable or less cost, such employees shall receive the benefits available to state employees employed by the system. The future salaries of employees making this choice shall be governed by policies established by the state board. Employees making this choice shall have no rights to salary increases accruing from past or future conditions or changes to their former compensation plans administered by local boards of education or area postsecondary technical education boards;

(2) The salary earned as of July 1, 1987, or the date on which the system assumes governance of the postsecondary technical school, whichever is later, and the benefits available to state employees

employed by the system as of the same date, provided that the system may increase the salaries of employees to conform with the state board compensation plan in effect as of July 1, 1987, or the date on which the system assumes governance of the postsecondary technical school. Employees making this choice shall have their compensation administered in conformity with state board policy in accordance with the state board compensation plan; or

(3) Employees of postsecondary technical schools formerly operated by local boards of education or area postsecondary technical education boards who choose to be promoted or who request to transfer to different positions or locations shall be placed under the state board compensation plan and shall receive benefits as provided by paragraph (2) of this Code section. (Code 1981, § 20-4-29, enacted by Ga. L. 1988, p. 1252, § 2; Ga. L. 2008, p. 335, § 11/SB 435.)

### OPINIONS OF THE ATTORNEY GENERAL

**Board cannot extend benefit options to all departmental employees.**

— Board of Technical and Adult Education cannot, without the approval of the Employee Benefit Plan Council, extend to all departmental employees the benefit op-

tions allowed for former employees of local boards of education or the area postsecondary technical education boards under O.C.G.A. § 20-4-29. 2001 Op. Att’y Gen. No. 2001-6.

### **20-4-30. Compensation of classified employees electing to become unclassified.**

Employees in the classified service as defined by Code Section 45-20-2 who are employed by postsecondary technical schools governed by the system who elect to become members of the unclassified service shall have their compensation established in conformity with state board policy in accordance with the state board compensation plan in effect at the time of such election. (Code 1981, § 20-4-30, enacted by Ga. L. 1988, p. 1252, § 2; Ga. L. 2008, p. 335, § 11/SB 435; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-30/HB 642.)

**The 2012 amendment**, effective July 1, 2012, substituted “service as defined by Code Section 45-20-2” for “service of the State Personnel Administration” near the beginning of this Code section.

**Editor’s notes.** — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be trans-

ferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

20-4-31. Initial sick and annual leave.

(a) An employee of a postsecondary technical school governed by the system may be granted an amount of initial accrued sick and annual leave; provided, however, that the amount granted does not exceed the amount accrued as of July 1, 1987, or the date on which the system assumes governance of the postsecondary technical school, whichever is later; provided, further, that the employee has not received payment from the former employer for the leave; provided, further, that the amount does not exceed the amount which would have been accrued in the employment of the system; provided, further, that the employee agrees not to leave employment voluntarily for a period of at least 12 months from July 1, 1987, or the date on which the system assumes governance of the postsecondary technical school, whichever is later; provided, further, any leave granted under this subsection shall be subject to the same limitations as leave accrued while employed by the system, including forfeiture.

(b) An employee of a local unit of administration, as defined in Code Section 20-2-242, who serves as a full-time staff person in technical or adult education and who, without any break in service, has previously become or hereafter becomes an employee of the Technical College System of Georgia as a result of this article shall be granted an amount of initial accrued sick leave which shall not exceed 45 days or the amount accrued as of the date of becoming an employee of the system, whichever is less; provided, further, that the employee has not received payment from the former employer for the sick leave; provided, further, that the amount of initial sick leave granted shall not exceed the amount which would have been accrued in the employ of the system; provided, further, that the employee agrees not to leave employment voluntarily for a period of at least 12 months from the date of becoming an employee of the system; and provided, further, that any sick leave granted under this subsection shall be subject to the same limitations as sick leave accrued while employed by the system, including forfeiture. (Code 1981, § 20-4-31, enacted by Ga. L. 1988, p. 1252, § 2; Ga. L. 1990, p. 1972, § 5; Ga. L. 2008, p. 335, § 2/SB 435.)

**Cross references.** — Sick leave for teachers and other personnel in public school system, § 20-2-850 et seq.

**Code Commission notes.** — Pursuant

to Code Section 28-9-5, in 2008, “system” was substituted for “department” throughout this Code section.

RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 188.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 460.



**20-4-32. Accrual of sick leave.**

Employees of postsecondary technical schools governed by the system shall accrue sick leave as provided for by the rules and regulations of the State Personnel Board. (Code 1981, § 20-4-32, enacted by Ga. L. 1988, p. 1252, § 2; Ga. L. 2008, p. 335, § 11/SB 435.)

**20-4-33. Days off with pay; accrual of annual leave.**

Employees of postsecondary technical schools governed by the system shall receive days off with pay, the total of which in any year shall not exceed the total of the number of state holidays provided by Code Section 1-4-1 and the number of annual leave days authorized by the rules and regulations of the State Personnel Board. The state board may, by policy, establish conditions regulating such days off with pay. Such employees shall accrue annual leave as provided for by the rules and regulations of the State Personnel Board. For the purpose of determining the number of annual leave days authorized to be accrued by the rules and regulations of the State Personnel Board, years of experience in the employment of local boards of education or area postsecondary technical education boards shall be counted as years of experience in the employment of postsecondary technical schools governed by the system. (Code 1981, § 20-4-33, enacted by Ga. L. 1988, p. 1252, § 2; Ga. L. 2008, p. 335, § 11/SB 435.)

**20-4-34. Rights and benefits of former employees of State Board of Postsecondary Vocational Education.**

All employees who were formerly employed by the State Board of Postsecondary Vocational Education and who have become employees of the Technical College System of Georgia under this article shall continue to have all rights and benefits of employment, including retirement benefits, that they had when employed by the State Board of Postsecondary Vocational Education. (Code 1981, § 20-4-34, enacted by Ga. L. 1988, p. 1252, § 2; Ga. L. 2008, p. 335, § 2/SB 435.)

**OPINIONS OF THE ATTORNEY GENERAL**

**Editor's notes.** — In light of the similarities of the statutory provisions, an opinion under prior law, which was subsequently repealed but was succeeded by provisions in this Code section, is included in the annotations for this Code section.

**Legislator may not perform functions of State Board of Postsecondary Vocational Education** by direct employment or other contractual arrangement. 1988 Op. Att'y Gen. No. 88-11 (decided under prior law).

**20-4-35. Reduction in force policy.**

The State Board of the Technical College System of Georgia shall develop and implement a policy which provides for an orderly and fair process to be used in the event any reduction in force becomes necessary. The reduction in force policy shall provide that:

- (1) Presidents of state technical institutes shall devise a plan for a reduction in force for their respective institutions;
- (2) Any reduction in force within an institution shall be limited to that institution;
- (3) The institute president shall decide the competitive area and competitive group to which any reduction in force is applicable;
- (4) All individuals within a competitive group will participate in the reduction in force process, regardless of whether they are in the classified or unclassified service, tenured or nontenured;
- (5) The State Board of the Technical College System of Georgia shall prescribe the basis for determining retention credits which shall be uniform among all state technical institutes;
- (6) Plans describing the process by which a reduction in force would be conducted within each state technical institute shall be approved by the State Board of the Technical College System of Georgia; and
- (7) Any employee of a state technical institute who believes the approved plan for that institution was not followed shall have the right to appeal to the State Board of the Technical College System of Georgia, and the decision of the board shall be final. (Code 1981, § 20-4-35, enacted by Ga. L. 1991, p. 691, § 1; Ga. L. 2011, p. 632, § 3/HB 49.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “State Board of Technical and Adult Education” throughout this Code section.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1991, the comma was deleted following “followed” in paragraph (7).

**20-4-36. Cooperation with study to identify problems in obtaining alternative formats for textbooks used by students with disabilities.**

The Technical College System of Georgia shall cooperate with the Board of Regents of the University System of Georgia in the study of practical problems involved in obtaining and producing textbooks and other instructional materials in alternative formats for students with disabilities. In cooperation with the board of regents, students with

disabilities, organizations and advocates for persons with disabilities, publishers, federal and state agencies concerned with opportunities for persons with disabilities, technical colleges that are unaffiliated with the Technical College System of Georgia, university and college presses, counterparts in other states, and other interested persons, the Technical College System of Georgia shall work toward the establishment of a system or clearing-house for sharing postsecondary texts in alternative formats while protecting the intellectual property rights of publishers. The Technical College System of Georgia shall report annually to the Governor and General Assembly regarding progress toward this goal. (Code 1981, § 20-4-36, enacted by Ga. L. 2002, p. 1041, § 3; Ga. L. 2008, p. 335, § 2/SB 435.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2002, “board of regents” was substituted for “Board of Regents” in the second sentence.

**Editor’s notes.** — Ga. L. 2002, p. 1041, § 1, not codified by the General Assembly, provides that: “colleges and universities in this state have made diligent efforts to accommodate the needs of students with disabilities requiring alternative formats for textbooks and other printed instructional materials used in postsecondary courses of study, but that colleges and universities are confronted with many practical problems in obtaining or producing these texts in alternative formats. Practical problems in obtaining these texts in alternative formats include the wide variety of texts used in postsecondary courses of study, a lack of bargaining

power with publishers of postsecondary textbooks in comparison with publishers of textbooks for elementary and secondary education, and hesitation among postsecondary institutions to share alternative formats because of concern about copyright law. Practical problems in producing such materials in alternative formats include the labor intensive and technical nature of the work, the frequent need for expertise in the subject matter of the texts, and the expense and time required for production. The General Assembly further finds that students with disabilities, colleges, universities, and publishers would benefit from cooperative development of a system for sharing those texts produced in alternative formats while adequately protecting the intellectual property rights of publishers.”

## **20-4-37. Office of College and Career Transitions; powers and duties.**

(a)(1) It is the intent of the General Assembly to:

(A) Increase high school graduation rates, potential job opportunities, and educational opportunities that will prepare students for success in college and the workplace;

(B) Establish intergovernmental cooperation between postsecondary institutions and local boards of education and collaboration with business, industry, and community stakeholders to aid relevant education programs and in the development and support of new and existing college and career academies in Georgia;

(C) Assist in the development of academic and career ready curriculum;



(D) Establish and manage support grant opportunities and awards for new and existing college and career academies;

(E) Establish a process that allows for college and career academy certification; and

(F) Collect and analyze data to evaluate the effectiveness of dual credit and dual enrollment programs, secondary and postsecondary partnerships, and college and career academics.

(2) The General Assembly finds that to accomplish these goals, an office should be established to coordinate the efforts of the various education agencies.

(b) As used in this Code section, the term:

(1) “Board” means the State Board of the Technical College System of Georgia.

(2) “Certification” means a formal process established by the Office of College and Career Transitions, and approved by the board, in which college and career academies successfully demonstrate appropriate levels of student achievement, community sustainability, workforce development, and school level governance.

(3) “Charter petitioner” means a local board of education, group of local boards of education, private individual, private organization, state or local public entity, or any group of these, that submits a petition for a charter in cooperation with one or more postsecondary institutions which have petitioned to establish a college and career academy as a charter school pursuant to Article 31 or Article 31A of Chapter 2 of this title.

(4) “Charter school” shall have the same meaning as in paragraph (3) of Code Section 20-2-2062 and as in paragraph (2) of Code Section 20-2-2081.

(5) “College and career academy” means a specialized charter school established by a partnership which demonstrates a collaboration between business, industry, and community stakeholders to advance workforce development between one or more local boards of education, a private individual, a private organization, or a state or local public entity in cooperation with one or more postsecondary institutions and approved by the State Board of Education in accordance with Article 31 of Chapter 2 of this title or the Georgia Charter Schools Commission in accordance with Article 31A of Chapter 2 of this title.

(6) “Office” means the Office of College and Career Transitions established pursuant to subsection (c) of this Code section.

(7) "Postsecondary institution" means a local technical college, community college, university, or other postsecondary institution operating under the authority of the Technical College System of Georgia or the University System of Georgia or other not for profit postsecondary institution accredited by the Southern Association of Colleges and Schools.

(8) "Start-up costs" means initial operating or capital costs, including, but not limited to, costs of improving real property.

(9) "Supplemental funding" means funding for purposes other than start-up costs which are related to the establishment and operation of college and career academies.

(c) The Office of College and Career Transitions shall be established within the Technical College System of Georgia to coordinate the efforts by the State Board of Education, the University System of Georgia, the Technical College System of Georgia, and other not for profit postsecondary institutions accredited by the Southern Association of Colleges and Schools in the professional development, curriculum support, and development and establishment of college and career academies.

(d) The board shall be authorized to allocate funds, including state funds, federal funds, proceeds of general obligation debt, or any other available funds, for a particular purpose for college and career academies for start-up costs or for other purposes related to the establishment and operation of such academies by a grant consideration process.

(e) A charter petitioner for a college and career academy that has submitted for approval or that has drafted for submission for approval a charter petition for a college and career academy shall be authorized to submit to the board an application for start-up funds for a college and career academy. The board shall approve applications for start-up funds for college and career academies that meet the criteria and requirements established pursuant to subsections (i) and (j) of this Code section. As part of such application process, the office shall consider charter applications for college and career academies in cooperation with the Office of Charter School Compliance and make recommendations to the State Board of Education for the approval, denial, and renewal of college and career academy charter petitions and specify the reasons for such recommendations. The State Board of Education should consider such a recommendation from the office prior to approving or denying a charter petition for a college and career academy. Funds shall not be released to an approved applicant unless the charter petition is approved by the State Board of Education pursuant to Article 31 of Chapter 2 of this title or the Georgia Charter Schools Commission in accordance with Article 31A of Chapter 2 of this title.

(f) The board shall be authorized to disburse supplemental funding to existing or new college and career academies which demonstrate a need for such funding.

(g)(1) The office shall establish a certification process, in collaboration with the Department of Education, for approval by the board. The office shall be authorized to certify college and career academies. The State Board of Education shall accept certification by the office as one component of determining compliance with charter requirements. The State Board of Education may request supplemental information from charter petitioners.

(2) Any certification process established pursuant to paragraph (1) of this subsection must require that the applicant demonstrates how the proposed college and career academy will increase student achievement, provide for dual credit and dual enrollment opportunities, increase work based learning opportunities, and address workforce development needs; articulates how the collaboration between business, industry, and community stakeholders will advance workforce development; demonstrates local governance and autonomy; and shows other benefits that meet the needs of the students and community.

(3) Certification by the office shall constitute a positive recommendation to the State Board of Education for renewal of a charter pursuant to Code Section 20-2-2064.1.

(h) The office shall be responsible for collecting and analyzing appropriate data from and about college and career academies on matters consisting of but not limited to college and career academy effectiveness. Collecting and reporting of data shall be in coordination with the Office of Charter School Compliance.

(i) The board shall establish eligibility criteria, requirements, and procedures for the disbursement of funding to college and career academies pursuant to this Code section. Such criteria, requirements, and procedures shall consider the strength of the proposed cooperative arrangements between the local board of education, the group of local boards of education, a private individual, a private organization, or a state or local public entity and one or more postsecondary institutions and must include active support from and a partnership with local business and community leaders for the college and career academy. The board may establish a matching requirement for recipients of funds under this Code section.

(j) A college and career academy receiving funds pursuant to this Code section shall submit an annual report to the board regarding the performance of such academy and the expenditure of funds received pursuant to this Code section. The report shall include, but not be



limited to, academic data, financial statements, an evaluation of the progress relative to relationships between and among the business, industry, and community stakeholders, and any other information requested by the board to demonstrate the yearly progress or effectiveness of the college and career academy.

(k) Representatives from business, industry, civic, and governmental agencies and educational organizations which are designated by the commissioner of the Technical College System of Georgia shall advise the board on matters pertaining to both the certification and governance of college and career academies. (Code 1981, § 20-4-37, enacted by Ga. L. 2011, p. 421, § 1/SB 161.)

**Effective date.** — This Code section became effective May 11, 2011.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2011, “the Tech-

nical College System of Georgia” was substituted for “Technical and Adult Education” in paragraph (b)(1).

### ARTICLE 3

#### INDUSTRY SERVICES TRAINING PROGRAM

##### **20-4-40. Program for quick start training established.**

There is established a supplemental program to provide special quick start training to meet the employment training needs of new and expanding industry as well as certain existing industries which may qualify under rules established by the State Board of the Technical College System of Georgia. The program shall be governed by the State Board of the Technical College System of Georgia. (Ga. L. 1968, p. 1138, § 1; Ga. L. 1988, p. 1252, § 3; Ga. L. 1992, p. 2201, § 1; Ga. L. 2011, p. 632, § 3/HB 49.)

**The 2011 amendment,** effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for

“State Board of Technical and Adult Education” twice in this Code section.

##### **20-4-41. Extent and nature of training to be offered.**

The programs of technical training under this article shall be supplementary to those offered by postsecondary technical schools and shall be operated on a state-wide basis to assist any area to become more competitive in industrial and economic development; provided, however, no program may be made available to any area except as prescribed by the State Board of the Technical College System of Georgia. The program prescribed in this article shall be concerned only with training for skilled and semiskilled operations, including supervisory personnel associated with such operations, and shall terminate when training needs have been met; provided, however, that basic

academic education may be included as a part of the training program when such is necessary to ensure success of trainees in the occupational training program. (Ga. L. 1968, p. 1138, § 3; Ga. L. 1982, p. 3, § 20; Ga. L. 1988, p. 1252, § 3; Ga. L. 2011, p. 632, § 3/HB 49.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “State Board of Technical and Adult Education” at the end of the first sentence.

**20-4-42. Administration of program.**

The Technical College System of Georgia shall administer the program under this article and shall provide for technical and engineering services, publicity for the program, instructional services, in-plant training analysis, rental of instructional facilities with necessary utilities, central warehousing and transportation of equipment and supplies, other necessary services, overall program direction, and an adequate staff to carry out an effective training program. (Ga. L. 1968, p. 1138, § 4; Ga. L. 1988, p. 1252, § 3; Ga. L. 2008, p. 335, § 2/SB 435.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 78. **C.J.S.** — 78 C.J.S., Schools and School Districts, § 103 et seq.

**20-4-43. Agreements for local facilities and employees; contracts or agreements with private firms.**

(a) Training programs under this article may be carried out on the basis of training agreements between local boards of education having postsecondary technical schools and the State Board of the Technical College System of Georgia. Under such agreements, the local board of education may make available its postsecondary technical school facilities or temporary rented facilities and shall pay all instructional salaries in accordance with the salary schedule established by the state board in agreement with the local board of education without consideration of the salary schedule adopted for regular instructional personnel, provided that teachers and others employed in such training programs shall be classified as temporary employees and shall not be eligible for participation in the Teachers Retirement System. All expenses incurred by a local board of education under such agreement in providing the services prescribed by this article shall be reimbursed by the state from funds provided for this purpose.

(b) Training programs under this article may also be carried out pursuant to annual contracts or agreements between the State Board of the Technical College System of Georgia and private industrial or business firms under rules and regulations adopted by the State Board

of the Technical College System of Georgia for such purpose. Any such training program carried out pursuant to any such contract shall be assigned to a state postsecondary technical school, an area postsecondary technical school, or the technical or vocational education division of a junior college operated in accordance with a joint agreement between the State Board of the Technical College System of Georgia and the board of regents at the time a site is selected for such training program.

(c) Each training program under this article shall be based on a specific training needs analysis and included in a training plan which defines training and services to be provided. (Ga. L. 1968, p. 1138, § 5; Ga. L. 1981, p. 893, § 1; Ga. L. 1988, p. 1252, § 3; Ga. L. 2011, p. 632, § 3/HB 49.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “State Board of Technical and Adult Education” in subsections (a) and (b).

#### RESEARCH REFERENCES

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 103 et seq., 138 et seq.

#### 20-4-44. Qualifications of employees.

The State Board of the Technical College System of Georgia may prescribe qualifications for persons employed in the program under this article without consideration of qualifications prescribed for personnel employed in regular instructional programs. (Ga. L. 1968, p. 1138, § 6; Ga. L. 1988, p. 1252, § 3; Ga. L. 2011, p. 632, § 3/HB 49.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “State Board of Technical and Adult Education” at the beginning of this Code section.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 162 et seq.

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 103 et seq., 293.

#### 20-4-45. Equipment procurement and use.

The Technical College System of Georgia shall be authorized to procure equipment necessary to carry out an adequate training program under this article. Such equipment shall be maintained in a warehouse reserve and shall become available to any area of the state where a training program creates a need but shall be returned to the warehouse reserve when no longer needed in a training program. In furtherance of this provision, equipment having long delivery dates



may be purchased in advance of an actual need upon the determination by the Technical College System of Georgia that a need for such equipment could reasonably be expected in the program. The system is authorized to provide for the transportation of instructional equipment and to employ equipment riggers, warehousemen, and other personnel needed to carry out this provision. Title to all equipment purchased under this article shall be vested in the State Board of the Technical College System of Georgia. (Ga. L. 1968, p. 1138, § 7; Ga. L. 1972, p. 1015, § 1004; Ga. L. 1988, p. 1252, § 3; Ga. L. 2008, p. 335, § 2/SB 435; Ga. L. 2011, p. 632, § 3/HB 49.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “State Board of Technical and Adult Education” in the last sentence of this Code section.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2008, “system” was substituted for “department” in the fourth sentence.

RESEARCH REFERENCES

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 103 et seq., 508.

20-4-46. Standards, rules, and regulations.

The State Board of the Technical College System of Georgia shall have the authority to promulgate any and all standards, rules, and regulations necessary to carry out the objectives and purposes of this article. (Ga. L. 1968, p. 1138, § 8; Ga. L. 1988, p. 1252, § 3; Ga. L. 2011, p. 632, § 3/HB 49.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for

“State Board of Technical and Adult Education” at the beginning of this Code section.

RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 78 et seq.

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 103 et seq.

20-4-47. Acceptance of federal and private grants.

To assist in carrying out this article, the State Board of the Technical College System of Georgia is authorized to accept grants of money, materials, services, or property of any kind from a federal agency, private agency, corporation, or individual. (Ga. L. 1968, p. 1138, § 9; Ga. L. 1988, p. 1252, § 3; Ga. L. 2011, p. 632, § 3/HB 49.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “State Board of Technical and Adult Education” in the middle of this Code section.

RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 357 et seq.      **C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 103 et seq., 508.

ARTICLE 4

PROPRIETARY SCHOOLS

20-4-60 through 20-4-79.

Reserved. Repealed by Ga. L. 1990, p. 1166, § 5, effective April 10, 1991.

**Editor’s notes.** — This article, consisting of Code Sections 20-4-60 through 20-4-79 and pertaining to proprietary schools, was based on Ga. L. 1972, p. 156, §§ 1-12, 14-21; Ga. L. 1972, p. 1015, § 408; Ga. L. 1973, p. 613, §§ 1, 2; Ga. L. 1974, p. 1418, §§ 1-8; Ga. L. 1985, p. 990, §§ 1-5; Ga. L. 1986, p. 10, § 20; Ga. L. 1989, p. 634, §§ 1-11. For new provisions relating to nonpublic postsecondary educational institutions, see Code Sections 20-3-250.1 et seq.

ARTICLE 5

TUITION FEES TO SUPPLEMENT STATE AND LOCAL FUNDING

20-4-100. Rules and regulations; authority to charge tuition fees; use of fees; effect on entitlement to other funds.

Repealed by Ga. L. 1988, p. 1252, § 1, effective July 1, 1988.

**Editor’s notes.** — Former Code Section 20-4-100 was based on Ga. L. 1984, p. 571, § 1; Ga. L. 1985, p. 149, § 20; and Ga. L. 1987, p. 575, § 3.

CHAPTER 5

LIBRARIES

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20-5-64. Appointment of compact administrator and deputy administrators.  
20-5-65. Notices of withdrawal from compact.



**Cross references.** — Certification of librarians, T. 43, C. 24.

## ARTICLE 1

### STATE PUBLIC LIBRARY ACTIVITIES

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

#### OPINIONS OF THE ATTORNEY GENERAL

**County libraries established and conducted for educational purposes.** — County library established and conducted as provided for in these provisions is for educational purposes and any recreation as devolves therefrom is a by-product. 1948-49 Op. Att'y Gen. p. 515.

In view of the inherent nature of library facilities as a learning tool and the pervasive relationship between educational au-

thorities and library systems on both the state and local governmental levels, together with the stated legislative policy that the establishment of a public library service is to be part of the provisions for public education in this state, the use of common school funds for the construction of public library facilities is an expenditure for educational purposes. 1975 Op. Att'y Gen. No. 75-33.

#### 20-5-1. State policy.

It is declared to be the policy of the state, as a part of the provisions for public education, to promote the establishment of public library service throughout the state. (Ga. L. 1943, p. 385, § 3; Ga. L. 2000, p. 618, § 85.)

**Editor's notes.** — Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

#### OPINIONS OF THE ATTORNEY GENERAL

**Use of school funds for construction of library facilities deemed expenditure for educational purposes.**

— In view of the inherent nature of library facilities as a learning tool and the pervasive relationship between educational authorities and library systems on both the state and local governmental levels, to-

gether with the stated legislative policy that the establishment of a public library service is to be part of the provisions for public education in this state, the use of common school funds for the construction of public library facilities is an expenditure for educational purposes. 1975 Op. Att'y Gen. No. 75-33.

#### RESEARCH REFERENCES

**C.J.S.** — 78 C.J.S., Schools and School Districts, § 103 et seq.

**20-5-1.1. Board of regents defined.**

As used in this article, the term “board of regents” means the Board of Regents of the University System of Georgia. (Code 1981, § 20-5-1.1, enacted by Ga. L. 2000, p. 618, § 85.)

**20-5-2. Powers and duties of the board of regents and director of University of Georgia Libraries; abolition of State Library Commission and transfer of functions; reports of state publications; electronic submission.**

(a) The board of regents shall give aid, advice, and counsel to all libraries and to communities which may propose to establish libraries as to the best means of establishing and administering them, the selection of books, cataloging, and other details of library management and shall exercise supervision over all public libraries and endeavor to improve libraries already established. The board of regents may also conduct a book-lending and information service for the benefit of the citizens of the state, free of cost except postage. The board of regents is also authorized to purchase books, periodicals, and other instructional materials for such purposes. The board of regents may also employ necessary professional and clerical staff to carry on the work as stated in this Code section and may pay their necessary traveling expenses while engaged in such work.

(b) The board of regents shall have authority to accept gifts of books, money, or other property from any public or private source, including the federal government and shall have authority to perform any and all functions necessary to carry out the intention and purposes of this article.

(c) The State Library Commission is abolished, and the functions and services exercised and performed by it shall be exercised and performed by the board of regents.

(d) The collection of books, periodicals, documents, and other library materials held by the board of regents is designated as the State Library.

(e) Each department and institution within the executive branch of state government shall make a report to the director of the University of Georgia Libraries on or before December 1 of each year containing a list by title of all public documents published or issued by such department or institution during the preceding state fiscal year. The report shall also contain a statement noting the frequency of publication of each such public document. The director of the University of Georgia Libraries may disseminate copies of the lists, or such parts thereof, in such form as the director of University of Georgia Libraries,

in his or her discretion, deems shall best serve the public interest. For purposes of this article, "public documents" shall mean the books, magazines, journals, pamphlets, reports, bulletins, and other publications of any agency, department, board, bureau, commission, or other institution of the executive branch of state government but specifically shall not include the reports of the Supreme Court and the Court of Appeals, the journals of the House and the Senate, or the session laws enacted by the General Assembly and shall not include forms published by any agency, department, board, bureau, commission, or other institution of the executive branch of state government.

(f) Each department and institution within the executive branch of state government shall submit to the director of the University of Georgia Libraries at least five copies of each of the public documents which such departments and institutions publish, within one month of its date of publication, unless the director of the University of Georgia Libraries requests additional copies of any such public documents, up to a maximum of 60 copies, in which case the number of copies requested shall be submitted.

(g) The Governor and all of the officers who are or may be required to make reports to the General Assembly shall furnish the director of the University of Georgia Libraries with at least five copies of each of such reports and additional copies upon request of the director of the University of Georgia Libraries.

(h) The Department of Administrative Services, the Georgia Correctional Industries Administration, the Board of Regents of the University System of Georgia, and any other agency of state government which prints public documents shall furnish to the director of the University of Georgia Libraries on a monthly basis a record of all public documents which have been printed or scheduled for printing by that agency during the preceding month.

(i) The director of the University of Georgia Libraries shall have the authority to supply copies of public documents to any state institution, public library, or public school in this state or to any other institution of learning which maintains a library, if such copies are available. Such copies may be furnished for a reasonable cost or free of charge or for the cost of postage or shipping, as the director of the University of Georgia Libraries deems appropriate.

(j) The director of the University of Georgia Libraries shall have the authority to act as the exchange agent of this state for the purpose of a regular exchange between this state and other states of public documents. The several state departments and institutions are required to deposit with the director of the University of Georgia Libraries for that purpose up to 50 copies of each of their public documents, as may be specified by the director of the University of Georgia Libraries.



(k) The director of the University of Georgia Libraries may transfer books and other library holdings to the Division of Archives and History, the Board of Regents of the University System of Georgia, or other public libraries. Books and other library holdings which are obsolete, defective, worn out, or surplus, or otherwise in the discretion of the director of the University of Georgia Libraries are not required, may be sold, destroyed, or otherwise disposed of by the director of the University of Georgia Libraries, without the need to comply with the provisions of Article 5 of Chapter 13 of Title 45 relating to the disposition of surplus state books.

(l) The director of the University of Georgia Libraries shall have the authority to employ the necessary personnel, including documents librarians and other professional personnel, to carry out the powers and duties set forth in this Code section.

(m) Any person or agency required by the provisions of this Code section to submit to the director of the University of Georgia Libraries copies of documents shall also submit such documents in such electronic form as the director shall specify, if such electronic form is readily available. (Ga. L. 1943, p. 385, §§ 1-3; Ga. L. 1989, p. 1129, § 6; Ga. L. 1993, p. 992, § 1; Ga. L. 1996, p. 167, § 6; Ga. L. 2000, p. 618, § 85; Ga. L. 2000, p. 1409, § 1; Ga. L. 2002, p. 532, § 6; Ga. L. 2008, p. 267, § 2/SB 482.)

**Editor's notes.** — Ga. L. 1996, p. 167, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Education Reform Act of 1996.'"

RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, Districts, § 103 et seq. 81A C.J.S., States, § 78.  
**C.J.S.** — 78 C.J.S., Schools and School § 105.

20-5-3. Disbursement of funds.

In order to effectuate the purposes of this article there shall be made available to the board of regents whatever funds may be duly allocated to it by the proper authority, either by specific appropriation or otherwise as now provided by law, and the board of regents shall be authorized to disburse such funds to public libraries serving persons of all ages through legally constituted municipal library boards or to the other legally constituted local library boards as may now or hereafter be established by law. The board of regents shall use such funds for the purpose of aiding and supplementing the establishment and development of public library services. (Ga. L. 1943, p. 385, § 4; Ga. L. 1996, p. 167, § 7; Ga. L. 2000, p. 618, § 85.)

**Editor's notes.** — Ga. L. 1996, p. 167, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Education Reform Act of 1996.'"

### OPINIONS OF THE ATTORNEY GENERAL

**Use of school funds for construction of library facilities deemed expenditure for educational purposes.** — In view of the inherent nature of library facilities as a learning tool and the pervasive relationship between educational authorities and library systems on both the state and local governmental levels, to-

gether with the stated legislative policy that the establishment of a public library service is to be part of the provisions for public education in this state, the use of common school funds for the construction of public library facilities is an expenditure for educational purposes. 1975 Op. Att'y Gen. No. 75-33.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 115.

#### 20-5-4. Annual reports by public libraries.

All public libraries in the state shall submit reports annually to the board of regents. (Ga. L. 1943, p. 385, § 3; Ga. L. 1996, p. 167, § 8; Ga. L. 2000, p. 618, § 85.)

**Editor's notes.** — Ga. L. 1996, p. 167, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Education Reform Act of 1996.'"

#### 20-5-5. Internet safety policies in public libraries.

(a) As used in this Code section, the term:

(1) "Acceptable-use policy" means a policy for Internet usage adopted by the governing board of a public library that meets the requirements of this Code section.

(2) "Child pornography" means any computer depiction or other material depicting a child under the age of 18 years engaging in sexually explicit conduct or in the simulation of such conduct.

(3) "Harmful to minors" has the meaning given to such term in Code Section 16-12-100.1.

(4) "Internet" means a global network that connects computers via telephone lines, fiber networks, or both to electronic information.

(5) "Obscene" has the meaning given to such term in Code Section 16-12-80.

(6) "Sexually explicit conduct" has the meaning given to such term in Code Section 16-12-100.

(b) No later than January 1, 2007, the governing body of each public library shall adopt an acceptable-use policy for its public library system. At a minimum, an acceptable-use policy shall contain provisions which are reasonably designed to:

(1) Prevent library patrons, including those patrons under 18 years of age, and library employees from using any computer equipment and communication services owned or leased by the public library for sending, receiving, viewing, or downloading visual depictions of obscenity, child pornography, or material that is harmful to minors; and

(2) Establish appropriate measures to be taken against library patrons and employees who willfully violate the acceptable-use policy.

(c) A public library shall take such steps as it deems appropriate to implement and enforce the acceptable-use policy, which shall include, but not be limited to:

(1) Use of software programs reasonably designed to block access to visual depictions of obscenity, child pornography, and material that is harmful to minors; or

(2) Selection of online servers that block access to visual depictions of obscenity, child pornography, and material that is harmful to minors.

(d) A public library shall not be subject to civil liability for damages to any person as a result of the failure of any approved software program or approved online server to block access to visual depictions of obscenity, child pornography, and material that is harmful to minors. Nothing in this Code section shall be deemed to abrogate or lessen any immunity or other protection against liability accorded to public libraries under an existing law or court decision.

(e) The Attorney General and the board of regents shall consult with and assist any public library in the development and implementation of an acceptable-use policy pursuant to this Code section.

(f)(1) No later than January 31, 2007, each public library shall submit a copy of the acceptable-use policy adopted pursuant to subsection (b) of this Code section to the board of regents. Such submission shall also include the identification of any software program or online server that is being utilized to block access to material in accordance with subsection (c) of this Code section.

(2) The board of regents shall review each acceptable-use policy and any subsequent revisions submitted pursuant to paragraph (3) of this subsection. If the board of regents determines after review that



a policy or revision is not reasonably designed to achieve the requirements of this Code section, the board of regents shall provide written notice to the public library explaining the nature of such noncompliance and the public library shall have 30 days from the receipt of written notice to correct such noncompliance. The board of regents may provide an extension to the 30 day period on a showing of good cause.

(3) No revision of an acceptable-use policy which has been approved by the board of regents pursuant to paragraph (2) of this subsection shall be implemented until such revision is approved by the board of regents. If the board of regents fails to disapprove the revision within 60 days after the submission is received, the public library may proceed with the implementation of the revision.

(4) The board of regents shall be authorized to withhold a portion of state funding to a public library if the public library:

(A) Fails to timely submit an acceptable-use policy in accordance with paragraph (1) of this subsection;

(B) Submits an acceptable-use policy that is not reasonably designed to achieve the requirements of this Code section; or

(C) Is not enforcing or is substantially disregarding its acceptable-use policy.

(5) If the board of regents disapproves an acceptable-use policy of a public library or any revision thereof or notifies the public library that it is subject to the withholding of funding pursuant to paragraph (4) of this subsection, the public library may appeal the decision to the superior court of the county where the public library is situated.

(g)(1) The board of regents shall be responsible for conducting investigations and making written determinations as to whether a public library has violated the requirements of this Code section.

(2) If the board of regents determines that a public library is in violation of the requirements of this Code section, it shall direct the public library to acknowledge and correct the violation within 30 days and to develop a corrective plan for preventing future recurrences.

(h)(1) Notwithstanding any other provision of this Code section to the contrary, an administrator or supervisor of a public library, or designee thereof, may disable the software program or online server that is being utilized to block access to material for an adult or for a minor who provides written consent from his or her parent or guardian to enable access to the Internet for bona fide research or other lawful purpose.

(2) Nothing in paragraph (1) of this subsection shall be construed to permit any person to have access to material the character of which is illegal under federal or state law.

(i) A public library which is fulfilling the requirements of the federal Children’s Internet Protection Act, P.L. 106-554, is not required to comply with this Code section. (Code 1981, § 20-5-5, enacted by Ga. L. 2006, p. 479, § 3/HB 1055; Ga. L. 2009, p. 8, § 20/SB 46.)

**Editor’s notes.** — Ga. L. 2006, p. 479, § 1/HB 1055, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Child Internet Protection Act.’”

ARTICLE 2  
LOCAL AND REGIONAL PUBLIC LIBRARIES

OPINIONS OF THE ATTORNEY GENERAL

**County libraries established and conducted for educational purposes.** — County library established and conducted as provided for in these provisions is for educational purposes, and such recreation as devolves therefrom is a by-product. 1948-49 Op. Att’y Gen. p. 515.

PART 1  
CITY PUBLIC LIBRARIES

20-5-20. Power of city to tax and appropriate for library purposes; election of trustees to control library funds.

Any city, through its properly constituted municipal authorities, may raise by taxation from year to year and permanently appropriate money for the purpose of establishing, erecting, maintaining, or assisting in maintaining a public library. Any such sum or sums of money so appropriated shall be expended by and under the direction of a board of trustees of such public library elected by the city council of such city. (Ga. L. 1901, p. 52, § 1; Ga. L. 1904, p. 90, § 1; Civil Code 1910, § 1566; Code 1933, § 32-2701.)

**Cross references.** — General power of municipal corporation to construct and operate libraries, § 36-34-3. and Towns in Georgia: A Distinction with a Difference?,” see 14 Mercer L. Rev. 385 (1963).

**Law reviews.** — For article, “Cities

JUDICIAL DECISIONS

**City must operate public library in accordance with law.** — While the establishment and operation of a public library by a city is permissive, a city having once established and undertaken the operation of a library must operate the li-

brary in accordance with the requirements of the general law. *Settlemayer v. Hartsfield*, 216 Ga. 246, 115 S.E.2d 520 (1960).

**No custom, acts, or courses of con-**

**duct could nullify the general law** as to operation of a city public library. *Settlemayer v. Hartsfield*, 216 Ga. 246, 115 S.E.2d 520 (1960).

### OPINIONS OF THE ATTORNEY GENERAL

**Employees of Atlanta Public Library not considered "teachers."** — Because of the distinction between city and noncity libraries, the fact that the Atlanta City Charter governs the composition, powers, and duties of the library board and because the teachers retirement provisions specify "regional or county" libraries and do not specifically

include "municipal" libraries, the Atlanta Public Library is a municipal library and, as such, the library's employees are not considered "teachers" as defined in the teachers retirement provisions for purposes of membership in the Teachers Retirement System of Georgia. 1978 Op. Att'y Gen. No. 78-14.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 102, 324, 325, 517, 518.

**C.J.S.** — 16D C.J.S., Constitutional Law, §§ 1959, 1960. 64A C.J.S., Municipal Corporations, § 2026.

### 20-5-21. Disbursement of library appropriations; annual reports by trustees.

In any city in which an appropriation shall be made under this part, the money so appropriated shall be drawn from the treasury of such city on the warrant of the board of trustees of the public library and shall be paid out from time to time for salaries, purchase of books, and other necessary expenses of the library; and an itemized statement of the amounts so paid out shall be made annually to the mayor of such city and by him submitted to the properly constituted authorities of such city. (Ga. L. 1901, p. 52, § 2; Ga. L. 1904, p. 90, § 2; Civil Code 1910, § 1567; Code 1933, § 32-2702.)

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 517, 518.

**C.J.S.** — 64A C.J.S., Municipal Corporations, § 2026.

### 20-5-22. Acceptance of donations by trustees.

The board of trustees of the public library of a city is authorized to accept and receive donations, either in money, land, or other property, for the purpose of erecting or assisting in the erection of suitable buildings for the use of such public library, for maintaining it, or for



assisting in maintaining it. (Ga. L. 1901, p. 52, § 3; Ga. L. 1904, p. 90, § 3; Civil Code 1910, § 1568; Code 1933, § 32-2703.)

### JUDICIAL DECISIONS

**Donation becomes public property.** — Donation made to the library trustees of a city and accepted by the trustees becomes the public property of the municipality. *Tedder v. Walker*, 145 Ga. 768, 89 S.E. 840 (1916).

**Trustees making illegal personal loan of donation personally liable to**

**city for money.** — When a donation was made to a municipality for a library and the trustees made a personal loan of it, such loan being illegal, the lenders are personally liable to the city for the money. *Tedder v. Walker*, 145 Ga. 768, 89 S.E. 840 (1916).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 326, 510.

### 20-5-23. Powers of trustees over library; librarian and assistant librarian or officers.

The board of trustees of the public library of a city shall exercise a strict and rigid supervision over such public library; shall pass all necessary rules and regulations for the government and control of it; and shall elect a librarian and, if necessary, an assistant librarian or designate some officer or officers to perform the duties of librarian or assistant librarian and appoint and discharge such officer or officers at pleasure. (Ga. L. 1901, p. 52, § 4; Ga. L. 1904, p. 90, § 4; Civil Code 1910, § 1569; Code 1933, § 32-2704.)

### JUDICIAL DECISIONS

**Trustees authorized to discharge library's director upon 30 days' notice.** — General law of the state applies to the operation of a city public library and the board of trustees is authorized to dis-

charge the director upon giving 30 days' notice as provided in the board's bylaws. *Settelmayr v. Hartsfield*, 216 Ga. 246, 115 S.E.2d 520 (1960).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 326.

### 20-5-24. City may bind itself to accept donation and make annual payments for library.

The municipal government of any city in which an appropriation shall be made under this part shall have authority to enter into a legal

and binding agreement to accept and receive any donation offered by any person or persons, and any such agreement shall be legal and binding upon the municipal government and its successors. Any agreements by the municipal government of a city to pay any sum or sums of money annually for the use of the public library shall be legal and binding on the city. Any ordinance or ordinances carrying such agreement into effect shall have the force and effect of law and be binding on the city during the time mentioned in the agreement and the ordinance. (Ga. L. 1901, p. 52, § 5; Ga. L. 1904, p. 90, § 5; Civil Code 1910, § 1570; Code 1933, § 32-2705.)

### JUDICIAL DECISIONS

**Cited** in *Settelmayer v. Hartsfield*, 216 Ga. 246, 115 S.E.2d 520 (1960).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 56 Am. Jur. 2d, Municipal Corporations, Counties and Other Political Subdivisions, §§ 472, 474, 510 et seq.

**C.J.S.** — 64 C.J.S., Municipal Corporations, § 1325.

## PART 2

### COUNTY AND REGIONAL PUBLIC LIBRARIES

**Editor's notes.** — Ga. L. 1984, p. 1005, § 1, effective July 1, 1984, repealed the Code sections formerly codified at this part and enacted the current part. The

former part consisted of Code Sections 20-5-40 through 20-5-43 and was based on Ga. L. 1935, p. 409, §§ 1 to 3; Ga. L. 1937, p. 715, § 1; Ga. L. 1979, p. 637, § 1.

### OPINIONS OF THE ATTORNEY GENERAL

**Muscogee County School Board authorized to operate a public library system** under the Library Standards Act, O.C.G.A. § 20-5-40 et seq.; the school board may thereby: 1) qualify to receive

state and federal funds; 2) guide the action of the county library director; and 3) participate in a regional multi-county library system established pursuant to law. 1987 Op. Att'y Gen. No. U87-30.

### 20-5-40. Power of local governments to establish public libraries; procedures for establishment.

(a) The governing authority of any county or municipality may establish a public library system. Any public library established pursuant to this part shall be a tax-exempt institution.

(b) A public library may be established in the following manner:

(1) By resolution or act, at the discretion of the governing authority, of any county or municipality, or any combination thereof;

(2) By approval of the voters of any county or municipality in a referendum election on the question of the establishment of a public library as provided in this paragraph. Upon a written petition containing 35 percent of the registered and qualified voters of a municipality or county being filed with the appropriate governing authority, the governing authority shall be required to hold and conduct a special referendum election for the purpose of submitting to the qualified voters of the municipality or county the question of whether or not a public library, as provided for in this part, shall be authorized. In the event a majority of the persons voting in the election vote in favor of the public library, then the governing authority of the municipality or county shall establish a public library as provided in this part. Otherwise, the governing authority shall have no authority to do so. Following the expiration of two years after any election is held which results in disapproval of a public library, as provided in this part, another election on this question shall be held if another petition, as provided in this paragraph, is filed with the appropriate governing authority; or

(3) By contractual agreement between the governing authorities of any county or municipality. (Code 1981, § 20-5-40, enacted by Ga. L. 1984, p. 1005, § 1.)

**Cross references.** — County law libraries, T. 36, C. 15.

**Law reviews.** — For article, "Cities

and Towns in Georgia: A Distinction with a Difference?," see 14 Mercer L. Rev. 385 (1963).

## OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarities of the statutory provisions, opinions under former Ga. L. 1935, p. 409, §§ 1 to 3, as amended, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Use of school funds for construction of library facilities deemed expenditure for educational purposes.** — In view of the inherent nature of library facilities as a learning tool and the pervasive relationship between educational authorities and library systems on both the state and local governmental levels, together with the stated legislative policy that the establishment of a public library service is to be part of the provisions for public education in this state, the use of common school funds for the construction

of public library facilities is an expenditure for educational purposes. 1975 Op. Att'y Gen. No. 75-33 (decided under former Ga. L. 1935, p. 409, §§ 1 to 3).

**Board can expend funds for bookmobile tag and insurance coverage.** — If a county board of education, as a political subdivision of the state, operates a public library, the board could legally expend public school funds for the purchase of a tag for the bookmobile; the same would be true as to the expense of insurance coverage. 1958-59 Op. Att'y Gen. p. 131 (decided under former Ga. L. 1935, p. 409, §§ 1 to 3).

**Counties and municipalities authorized to contract with one another.** — It appears that counties and municipalities have the authority to contract with one another for the purpose of establishing or maintaining public libraries.



1948-49 Op. Att'y Gen. p. 122 (decided under former Ga. L. 1935, p. 409, §§ 1 to 3).

**Employees of Atlanta Public Library not considered "teachers."** — Because of the distinction between city and noncity libraries, the fact that the Atlanta City Charter governs the composition, powers, and duties of the library board and because the teachers retirement provisions specify "regional or

county" libraries and do not specifically include "municipal" libraries, the Atlanta Public Library is a municipal library and, as such, the library's employees are not considered "teachers" as defined in the teachers retirement provisions for purposes of membership in the Teachers Retirement System of Georgia. 1978 Op. Att'y Gen. No. 78-14 (decided under former Ga. L. 1935, p. 409, §§ 1 to 3).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 472, 517, 518.

## 20-5-41. Establishment of boards of trustees to govern libraries.

Each library system shall be governed by a board of trustees. Each system shall have a governing board of trustees but may have other affiliated boards of trustees for member libraries. The county board of library trustees shall exercise authority in a county system. The regional board of library trustees shall exercise authority in a multi-county system. (Code 1981, § 20-5-41, enacted by Ga. L. 1984, p. 1005, § 1.)

## OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarities of the statutory provisions, opinions under former Ga. L. 1935, p. 409, §§ 1 to 3, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Authority for board to hold title.** — There is strong implication and indirect authority for the board to hold title to real property, there being no statutes to the contrary. 1963-65 Op. Att'y Gen. p. 137 (decided under former Ga. L. 1935, p. 409, §§ 1 to 3).

**Use of school funds for construction of library facilities deemed expenditure for educational purposes.** — In view of the inherent nature of library facilities as a learning tool and the pervasive relationship between educational authorities and library systems on both the

state and local governmental levels, together with the stated legislative policy that the establishment of a public library service is to be part of the provisions for public education in this state, the use of common school funds for the construction of public library facilities is an expenditure for educational purposes. 1975 Op. Att'y Gen. No. 75-33 (decided under former Ga. L. 1935, p. 409, §§ 1 to 3).

**Conflict of interest.** — Member of a county board of education, which chooses one-third of the membership of a library board, should not also be employed by the library board as the librarian; and a person who currently holds both positions should resign from one of the two positions to avoid a conflict of interest. 1980 Op. Att'y Gen. No. 80-64 (decided under former Ga. L. 1935, p. 409).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 324 et seq.      **C.J.S.** — 78 C.J.S., Schools and School Districts, § 138 et seq.

**20-5-42. Membership of boards of trustees.**

(a) A county board of trustees shall consist of at least one appointee from each governmental agency financially supporting the library on a regular basis. Appointments shall be made in writing pursuant to the constitution and bylaws of the library system, shall be transmitted to the appointee and to the library, and shall state the length of term and expiration date of the appointment.

(b) A regional board of library trustees shall consist of trustees serving on member county boards who are appointed to the regional board by each county board for a term specified in writing pursuant to the constitution and bylaws of the library system.

(c) Board members shall serve staggered terms for continuity of service.

(d) Board members shall be removed for cause or for failure to attend three consecutive meetings pursuant to the library system's constitution and bylaws or the local constitution and bylaws.

(e) Vacancies shall be filled in the same manner as appointments are made. If a vacancy occurs prior to the expiration of a trustee's term, the new appointee shall complete the unexpired term.

(f) Members of the governing authority of any county, municipality, or governmental agency financially supporting the library shall be eligible for appointment and service as members or as ex officio members of the board of trustees of any library or library system. No such governing authority shall appoint a majority of its members to the board of trustees of any library or library system nor shall a majority of the board of trustees of any library or library system consist of members of the governing authority of any single county, municipality, or governmental agency.

(g) Public library system boards of trustees may provide for ex officio board membership in the system constitution and bylaws. (Code 1981, § 20-5-42, enacted by Ga. L. 1984, p. 1005, § 1; Ga. L. 1991, p. 982, § 1.)

## OPINIONS OF THE ATTORNEY GENERAL

**Appointment of members.** — All trustees are to be appointed by the members of a county board of library governmental agencies which financially sup-

port the library system on a regular basis.  
1988 Op. Att'y Gen. No. U88-5.

#### **20-5-43. Duties and responsibilities of boards of trustees.**

The board of trustees shall have duties and responsibilities which include but are not limited to the following:

(1) To employ a library director who meets state certification requirements and such other employees as necessary upon the recommendation of the library system director; provided, however, that the board shall be authorized to delegate employment of staff members to the library system director;

(2) To approve budgets prepared by the library system director and assume responsibility for the presentation of the library's fiscal needs to the supporting agencies;

(3) To attend board meetings;

(4) To establish policies governing library programs, including rules and regulations governing the use of the library;

(5) To set policy for the administration of gifts of money and property;

(6) To present financial and progress reports to governing officials and to the public;

(7) To notify the appropriate authorities of a vacancy on the board so that a person may be appointed to complete unexpired or full terms; and

(8) To notify the library system director, in advance, of all meetings of library boards and board committees. (Code 1981, § 20-5-43, enacted by Ga. L. 1984, p. 1005, § 1.)

#### **20-5-44. Compensation of trustees.**

Members of the board of trustees shall receive no compensation; provided, however, that such members may be reimbursed for any reasonable and necessary expenses incurred in the performance of library business or if stipulated in terms of any bequest or gift. Dues or fees for membership in local, state, regional, and national library associations may be paid from operating funds in accordance with the constitution and bylaws of the library system. (Code 1981, § 20-5-44, enacted by Ga. L. 1984, p. 1005, § 1.)

#### **20-5-45. Directors of library systems; duties and responsibilities.**

Every public library system shall have a director. Any person appointed as director of a public library system must hold at least a Grade



5(b) Librarian's Professional Graduate Certificate, as defined by the State Board for the Certification of Librarians; provided, however, that any person who was serving as acting director of a public library system as of July 1, 1984, shall be authorized to continue to serve as director. The director shall be appointed by the board of trustees and shall be the administrative head of the library system under the direction and review of the board. The director of a library system shall have duties and responsibilities which include but are not limited to the following:

(1) To recommend for employment or termination other staff members, as necessary, in compliance with applicable laws and the availability of funds and to employ or terminate other staff members if so authorized by the library board;

(2) To attend all meetings called by the Office of Public Library Services of the Board of Regents of the University System of Georgia or send a substitute authorized by the office director;

(3) To prepare any local, state, or federal annual budgets;

(4) To notify the board of trustees and the Office of Public Library Services of the Board of Regents of the University System of Georgia of any failure to comply with:

(A) Policies of the board;

(B) Criteria for state aid;

(C) State and federal rules and regulations; and

(D) All applicable local, state, or federal laws;

(5) To administer the total library program, including all affiliated libraries, in accordance with policies adopted by the system board of trustees; and

(6) To attend all meetings of the system board of trustees and affiliated boards of trustees or to designate a person to attend in his or her place. (Code 1981, § 20-5-45, enacted by Ga. L. 1984, p. 1005, § 1; Ga. L. 1996, p. 167, § 9; Ga. L. 2000, p. 618, § 86; Ga. L. 2001, p. 4, § 20.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1996, a semicolon was substituted for a colon at the end of subparagraph (4)(D).

**Editor's notes.** — Ga. L. 1996, p. 167, § 1, not codified by the General Assembly, provides: "This Act shall be known and

may be cited as the 'Education Reform Act of 1996.'"

Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

### OPINIONS OF THE ATTORNEY GENERAL

**Graduation from American Library Association accredited schools.** — It is within a legislative or regulatory body's discretion to conclude that graduation from American Library Association accredited schools is a proper requirement for state certification. 1995 Op. Att'y Gen. No. U95-24.

#### 20-5-46. Reports of the library system.

The library system shall make such reports as deemed necessary by local and state funding agencies. In every case at least an annual report of activities, income, and expenditures shall be filed with each funding agency. (Code 1981, § 20-5-46, enacted by Ga. L. 1984, p. 1005, § 1.)

#### 20-5-47. Written constitution.

(a) The board of trustees of each county and regional library shall have a written constitution and bylaws stating policy which shall be approved by the board. Such constitution and bylaws shall be drafted in accordance with the current edition of the *Handbook on Constitutions, By-laws and Contracts for Georgia Public Libraries*.

(b) Policies stated in the constitution of the county board may not be in conflict with the policies of the constitution of the regional board and state and federal laws and regulations. The constitution of the regional board shall not be in conflict with state and federal laws and regulations.

(c) All current constitutions and bylaws must be on file in the Office of Public Library Services of the Board of Regents of the University System of Georgia, and all amendments must be filed with the office immediately upon adoption. (Code 1981, § 20-5-47, enacted by Ga. L. 1984, p. 1005, § 1; Ga. L. 1996, p. 167, § 10; Ga. L. 2000, p. 618, § 87; Ga. L. 2001, p. 4, § 20.)

**Editor's notes.** — Ga. L. 1996, p. 167, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Education Reform Act of 1996.'" Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

#### 20-5-48. Ownership of library property.

(a) A clear title in fee simple to an approved site on which a library facility is to be located shall be held by either the library board of trustees or the county or municipality. Title to property used for library purposes shall be vested in the library board of trustees or in that local agency which makes the major financial contribution toward construction costs. Notwithstanding any provision in this part to the contrary,

any facility, the title to which currently is held by a nonprofit organization and which is now being operated by a public library board of trustees, may continue to be operated by that library board of trustees if the operation of that facility by the board of trustees meets the standards of the Office of Public Library Services of the Board of Regents of the University System of Georgia; and the title to that facility may remain in the hands of that nonprofit organization. When the composition of a library system is changed or when the library system is dissolved and the title is vested in the library board of trustees, the Office of Public Library Services of the Board of Regents of the University System of Georgia shall serve as mediator in determining ownership of property.

(b) Other property including, but not limited to, equipment and materials that were purchased with state, federal, or contract funds coming through the system budget shall be owned by the system board of trustees and shall be placed or transferred where it is most useful. Upon dissolution or significant structural change within the system, such property shall be divided on a pro rata basis according to the proportion of financial costs of property borne by the involved parties. The library system board of trustees shall furnish the financial and statistical information considered by the parties attempting to reach agreement. If the parties are unable to reach a mutually agreeable solution, the final decision of property ownership shall be made by the Office of Public Library Services of the Board of Regents of the University System of Georgia or its designee. (Code 1981, § 20-5-48, enacted by Ga. L. 1984, p. 1005, § 1; Ga. L. 1985, p. 149, § 20; Ga. L. 1986, p. 10, § 20; Ga. L. 1996, p. 167, § 11; Ga. L. 2000, p. 618, § 88.)

**Editor's notes.** — Ga. L. 1996, p. 167, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Education Reform Act of 1996.'"

Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

## 20-5-49. Authorization of library systems to enter into contracts.

Library systems are authorized to make and enter into such contracts or agreements as are deemed necessary and desirable. All such contracts or agreements entered into shall:

- (1) Detail the specific nature of the services, programs, facilities, arrangements, or properties to which such contracts or agreements are applicable;
- (2) Provide for the allocation of costs and other financial responsibilities;



(3) Specify the respective rights, duties, obligations, and liabilities of the parties; and

(4) Set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriated to the proper effectuation and performance of the agreement.

No public or private library agency shall enter into any agreement itself, or jointly with any other library agency, to exercise any power or engage in any action prohibited by the Constitution or laws of this state. (Code 1981, § 20-5-49, enacted by Ga. L. 1984, p. 1005, § 1; Ga. L. 1985, p. 149, § 20; Ga. L. 1986, p. 10, § 20.)

#### **20-5-50. Requirement of finance bond.**

Each library board which handles finances must keep a current bond for an adequate amount determined by the board of trustees and recorded in the minutes on the library director, the treasurer of the board of trustees, or other officials and employees authorized to handle funds. Proof of the bond for each board must be filed with the Renewal Application for State Aid. (Code 1981, § 20-5-50, enacted by Ga. L. 1984, p. 1005, § 1.)

#### **20-5-51. Dissolution of or withdrawal from a library system.**

(a) A library system shall be dissolved by a reversal of procedures followed in its original organization. A majority of the board members in a majority of the counties must agree to the dissolution of the system. One county in a multicounty system may withdraw by a reversal of the procedure by which the county became a member.

(b) If the local constitution and bylaws or participating agreement does not specify a notification period for withdrawal, the proper notice shall be sent six months prior to the end of the state fiscal year. This notice must include reasons for the withdrawal and the method by which the decision was reached and must be sent to the chairman of the system board of trustees and the system library director. The Board of Regents of the University System of Georgia must be notified of the receipt of this letter of intent within five working days.

(c) Upon dissolution or withdrawal, no further state or federal grant funds shall be paid for or to the dissolving or withdrawing unit or units until such time as the unit or units reestablish the library or libraries pursuant to this part and meet eligibility requirements for such grant funds.

(d) A multicounty regional system may elect to expel a member county upon the following conditions:

(1) Failure of the county to maintain the agreed level of support to the regional system as in the most recent system-participating agreement; or

(2) Failure of the county to meet criteria which may jeopardize the system's eligibility for state or federal funds.

(e) If the system's constitution and bylaws or participating agreement fails to describe a notice period for expulsion, the proper notice shall be sent not less than six months prior to the end of the state fiscal year. This notice must be sent to the chairperson of the county board of trustees, all funding agencies party to the participating agreement, the system library director, and the Office of Public Library Services of the Board of Regents of the University System of Georgia.

(f) Upon total dissolution of a library system, all property shall be disposed of as provided in this part. (Code 1981, § 20-5-51, enacted by Ga. L. 1984, p. 1005, § 1; Ga. L. 1996, p. 167, § 12; Ga. L. 2000, p. 618, § 89.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2005, "Board of Regents of the University System of Georgia" was substituted for "Office of Public Library Services of the Department of Technical and Adult Education" in the last sentence of subsection (b).

**Editor's notes.** — Ga. L. 1996, p. 167,

§ 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Education Reform Act of 1996.'"

Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

## **20-5-52. Prohibition of theft or damage of library property.**

Any person who shall steal or unlawfully take or willfully or maliciously write upon, cut, tear, deface, disfigure, soil, obliterate, break, or destroy or who shall sell or buy or receive, knowing it to have been stolen, any book, pamphlet, document, newspaper, periodical, map, chart, picture, portrait, engraving, statue, coin, medal, equipment, specimen, recording, video product, microform, computer software, film, or other work of literature or object of art or the equipment necessary to its display or use belonging to or in the care of a public library shall be guilty of a misdemeanor. (Code 1981, § 20-5-52, enacted by Ga. L. 1984, p. 1005, § 1.)

## **20-5-53. Procedures following failure of library patron to return borrowed property.**

Any person who borrows from any public library any book, newspaper, magazine, manuscript, pamphlet, publication, recording, video product, microform, computer software, film, or other article or equipment necessary to its display or use belonging to or in the care of such

public library under any agreement to return it and thereafter fails to return such book, newspaper, magazine, manuscript, pamphlet, publication, recording, video product, microform, computer software, film, or other article or equipment necessary to its display or use shall be given written notice, mailed to his last known address or delivered in person, to return such article or equipment within 15 days after the date of such notification. Such notice shall contain a copy of this Code section. If such person shall thereafter willfully and knowingly fail to return such article or equipment within 15 days, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$500.00 or imprisonment for not more than 30 days and shall be required to return such article or equipment or provide reimbursement for the replacement cost of such article or equipment. (Code 1981, § 20-5-53, enacted by Ga. L. 1984, p. 1005, § 1.)

#### **20-5-54. Prohibition of concealing or removing library property.**

Any person who, without authority and with the intention of depriving the public library of the ownership of such property, willfully conceals a book or other public library property, while still on the premises of such public library, or willfully or without authority removes any book or other property from any public library shall be guilty of a misdemeanor; provided, however, that, if the replacement cost of the public library property is less than \$25.00, the punishment shall be a fine of not more than \$250.00. Proof of the willful concealment of any book or other public library property while still on the premises of such public library shall be prima-facie evidence of intent to violate this Code section. (Code 1981, § 20-5-54, enacted by Ga. L. 1984, p. 1005, § 1; Ga. L. 1985, p. 149, § 20.)

#### **20-5-55. Immunity of library agents and employees from civil actions arising from part.**

An agent or employee of a public library or of any department or office of the state or local government causing the arrest of any person pursuant to the provisions of this part shall not be held civilly liable for unlawful detention, slander, malicious prosecution, false imprisonment, false arrest, or assault and battery of the person so arrested unless excessive or unreasonable force is used, whether such arrest takes place on the premises by such agent or employee; provided, however, that, in causing the arrest of such person, the public library or agent or employee of the public library had at the time of such arrest probable cause to believe that the person committed willful theft or concealment of books or other library property. (Code 1981, § 20-5-55, enacted by Ga. L. 1984, p. 1005, § 1.)



## RESEARCH REFERENCES

**ALR.** — Appealability, under collateral order doctrine, of order denying qualified immunity in 42 USCS § 1983 or Bivens cases, 105 ALR Fed. 851.

**20-5-56. Requirement of certification of librarians.**

All persons holding professional positions with the title of librarian must be certified by the State Board for the Certification of Librarians. (Code 1981, § 20-5-56, enacted by Ga. L. 1984, p. 1005, § 1.)

**Cross references.** — Librarians, § 43-24-1 et seq.

**Administrative rules and regulations.** — Certification of librarians, Official Compilation of the Rules and Regulations of the State of Georgia, State Board for the Certification of Librarians, Chapter 320-3.

**20-5-57. Penalty.**

Any failure to comply with the provisions of this part shall result in the forfeiture of all state and federal library aid to the system. (Code 1981, § 20-5-57, enacted by Ga. L. 1984, p. 1005, § 1.)

**20-5-58. Time requirement for existing library systems to conform with part.**

A library system existing prior to July 1, 1984, shall have until July 1, 1989, to comply fully with the provisions of this part, and any provision to the contrary within Chapter 24 of Title 43, relating to libraries, shall be superseded by the provisions of this part. (Code 1981, § 20-5-58, enacted by Ga. L. 1984, p. 1005, § 1.)

**20-5-59. Exemption of municipal public libraries from part.**

This part shall not apply to any municipal public library. (Code 1981, § 20-5-59, enacted by Ga. L. 1984, p. 1005, § 1.)

## ARTICLE 3

## INTERSTATE LIBRARY COMPACT

**20-5-60. "State library agency" defined.**

As used in the Interstate Library Compact, "state library agency," with reference to this state, means the Office of Public Library Services of the Board of Regents of the University System of Georgia. (Ga. L. 1972, p. 872, § 3; Ga. L. 1996, p. 167, § 13; Ga. L. 2000, p. 618, § 90.)

**Editor's notes.** — Ga. L. 1996, p. 167, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Education Reform Act of 1996.'"

Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.'"

## 20-5-61. Compact enacted; terms.

The Interstate Library Compact is enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

### "INTERSTATE LIBRARY COMPACT

#### ARTICLE I. POLICY AND PURPOSE.

Because the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the states party to this compact to cooperate and share their responsibilities; to authorize cooperation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a cooperative basis, and to authorize cooperation and sharing among localities, states and others in providing joint or cooperative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service.

#### ARTICLE II. DEFINITIONS.

As used in this compact:

(a) "Public library agency" means any unit or agency of local or state government operating or having power to operate a library.

(b) "Private library agency" means any nongovernmental entity which operates or assumes a legal obligation to operate a library.

(c) "Library agreement" means a contract establishing an interstate library district pursuant to this compact or providing for the joint or cooperative furnishing of library services.

#### ARTICLE III. INTERSTATE LIBRARY DISTRICTS.

(a) Any one or more public library agencies in a party state in cooperation with any public library agency or agencies in one or more other party states may establish and maintain an interstate library district. Subject to the provisions of this compact and any other laws of the party states which pursuant hereto remain applicable, such district

may establish, maintain and operate some or all of the library facilities and services for the area concerned in accordance with the terms of a library agreement therefor. Any private library agency or agencies within an interstate library district may cooperate therewith, assume duties, responsibilities and obligations thereto, and receive benefits therefrom as provided in any library agreement to which such agency or agencies become party.

(b) Within an interstate library district, and as provided by a library agreement, the performance of library functions may be undertaken on a joint or cooperative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.

(c) If a library agreement provides for joint establishment, maintenance or operation of library facilities or services by an interstate library district, such district shall have power to do any one or more of the following in accordance with such library agreement:

1. Undertake, administer and participate in programs or arrangements for securing, lending or servicing of books and other publications, and other materials suitable to be kept or made available by libraries, library equipment or for the dissemination of information about libraries, the value and significance of particular items therein, and the use thereof.

2. Accept for any of its purposes under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, (conditional or otherwise), from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm or corporation, and receive, utilize and dispose of the same.

3. Operate mobile library units or equipment for the purpose of rendering bookmobile service within the district.

4. Employ professional, technical, clerical and other personnel, and fix terms of employment, compensation and other appropriate benefits; and where desirable, provide for the in-service training of such personnel.

5. Sue and be sued in any court of competent jurisdiction.

6. Acquire, hold, and dispose of any real or personal property or any interest or interests therein as may be appropriate to the rendering of library service.

7. Construct, maintain and operate a library, including any appropriate branches thereof.



8. Do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing powers.

#### ARTICLE IV. INTERSTATE LIBRARY DISTRICTS, GOVERNING BOARD.

(a) An interstate library district which establishes, maintains or operates any facilities or services in its own right shall have a governing board which shall direct the affairs of the district and act for it in all matters relating to its business. Each participating public library agency in the district shall be represented on the governing board which shall be organized and conduct its business in accordance with provisions therefor in the library agreement. But in no event shall a governing board meet less often than twice a year.

(b) Any private library agency or agencies party to a library agreement establishing an interstate library district may be represented on or advise with the governing board of the district in such manner as the library agreement may provide.

#### ARTICLE V. STATE LIBRARY AGENCY COOPERATION.

Any two or more state library agencies of two or more of the party states may undertake and conduct joint or cooperative library programs, render joint or cooperative library services, and enter into and perform arrangements for the cooperative or joint acquisition, use, housing and disposition of items or collections of materials which, by reason of expense, rarity, specialized nature, or infrequency of demand therefor would be appropriate for central collection and shared use. Any such programs, services or arrangements may include provision for the exercise on a cooperative or joint basis of any power exercisable by an interstate library district and an agreement embodying any such program, service or arrangement shall contain provisions covering the subjects detailed in Article VI of this compact for interstate library agreements.

#### ARTICLE VI. LIBRARY AGREEMENTS.

(a) In order to provide for any joint or cooperative undertaking pursuant to this compact, public and private library agencies may enter into library agreements. Any agreement executed pursuant to the provisions of this compact shall, as among the parties to the agreement:

1. Detail the specific nature of the services, programs, facilities, arrangements or properties to which it is applicable.
2. Provide for the allocation of costs and other financial responsibilities.
3. Specify the respective rights, duties, obligations and liabilities of the parties.

4. Set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of the agreement.

(b) No public or private library agency shall undertake to exercise itself, or jointly with any other library agency, by means of a library agreement any power prohibited to such agency by the constitution or statutes of its state.

(c) No library agreement shall become effective until filed with the compact administrator of each state involved and approved in accordance with Article VII of this compact.

#### ARTICLE VII. APPROVAL OF LIBRARY AGREEMENTS.

(a) Every library agreement made pursuant to this compact shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general of each state in which a public library agency party thereto is situated, who shall determine whether the agreement is in proper form and compatible with the laws of his state. The attorneys general shall approve any agreement submitted to them unless they shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public library agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within ninety days of its submission shall constitute approval thereof.

(b) In the event that a library agreement made pursuant to this compact shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorneys general pursuant to paragraph (a) of this Article. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorneys general.

#### ARTICLE VIII. OTHER LAWS APPLICABLE.

Nothing in this compact or in any library agreement shall be construed to supersede, alter or otherwise impair any obligation imposed on any library by otherwise applicable law, nor to authorize the transfer or disposition of any property held in trust by a library agency in a manner contrary to the terms of such trust.

## ARTICLE IX. APPROPRIATIONS AND AID.

(a) Any public library agency party to a library agreement may appropriate funds to the interstate library district established thereby in the same manner and to the same extent as to a library wholly maintained by it and, subject to the laws of the state in which such public library agency is situated, may pledge its credit in support of an interstate library district established by the agreement.

(b) Subject to the provisions of the library agreement pursuant to which it functions and the laws of the states in which such district is situated, an interstate library district may claim and receive any state and federal aid which may be available to library agencies.

## ARTICLE X. COMPACT ADMINISTRATOR.

Each state shall designate a compact administrator with whom copies of all library agreements to which his state or any public library agency thereof is party shall be filed. The administrator shall have such other powers as may be conferred upon him by the laws of his state and may consult and cooperate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact. If the laws of a party state so provide, such state may designate one or more deputy compact administrators in addition to its compact administrator.

## ARTICLE XI. ENTRY INTO FORCE AND WITHDRAWAL.

(a) This compact shall enter into force and effect immediately upon its enactment into law by any two states. Thereafter, it shall enter into force and effect as to any other state upon the enactment thereof by such state.

(b) This compact shall continue in force with respect to a party state and remain binding upon such state until six months after such state has given notice to each other party state of the repeal thereof. Such withdrawal shall not be construed to relieve any party to a library agreement entered into pursuant to this compact from any obligation of that agreement prior to the end of its duration as provided therein.

## ARTICLE XII. CONSTRUCTION AND SEVERABILITY.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact



shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.” (Ga. L. 1972, p. 872, § 1; Ga. L. 1982, p. 3, § 20.)

RESEARCH REFERENCES

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| <p><b>Am. Jur. 2d.</b> — 16A Am. Jur. 2d, Constitutional Law, § 261 et seq. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 5.</p> | <p><b>C.J.S.</b> — 81A C.J.S., States, §§ 31, 32, 143.</p> |
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**20-5-62. Participating political subdivisions to comply with laws on capital outlay and pledging of credit.**

No municipality, county, or other political subdivision of this state shall be a party to a library agreement which provides for the construction or maintenance of a library pursuant to Article III, subdivision (c), paragraph (7) of the compact, or pledge its credit in support of such a library, or contribute to the capital financing thereof, except after compliance with any laws applicable to such municipalities, counties, or political subdivisions relating to or governing capital outlay and the pledging of credit. (Ga. L. 1972, p. 872, § 2.)

**20-5-63. State and federal aid to interstate library districts.**

An interstate library district lying partly within this state may claim and be entitled to receive state aid in support of any of its functions to the same extent and in the same manner as such functions are eligible for support when carried on by entities wholly within this state. For the purposes of computing and apportioning state aid to an interstate library district, this state will consider that portion of the area which lies within this state as an independent entity for the performance of the aided function or functions and compute and apportion the aid accordingly. Subject to any applicable laws of this state, such a district also may apply for and be entitled to receive any federal aid for which it may be eligible. (Ga. L. 1972, p. 872, § 4.)

**20-5-64. Appointment of compact administrator and deputy administrators.**

The board of regents shall appoint an officer of this state to be the compact administrator pursuant to Article X of the compact. The board of regents shall also appoint one or more deputy compact administrators pursuant to such article. (Ga. L. 1972, p. 872, § 5; Ga. L. 2000, p. 618, § 91.)

**Editor's notes.** — Ga. L. 2000, p. 618, may be cited as the 'A Plus Education § 1, not codified by the General Assembly, Reform Act of 2000.'" provides: "This Act shall be known and

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 5.      **C.J.S.** — 81A C.J.S., States, § 31.

#### 20-5-65. Notices of withdrawal from compact.

In the event of withdrawal from the compact, the board of regents shall send and receive any notices required by Article XI(b) of the compact. (Ga. L. 1972, p. 872, § 6; Ga. L. 2000, p. 618, § 92.)

**Editor's notes.** — Ga. L. 2000, p. 618, may be cited as the 'A Plus Education § 1, not codified by the General Assembly, Reform Act of 2000.'" provides: "This Act shall be known and

CHAPTER 6

EDUCATION COMPACTS

|  |                                |          |   |
|--|--------------------------------|----------|---|
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ARTICLE 1

SOUTHERN REGIONAL EDUCATION COMPACT

20-6-1. Approval and terms of compact.

The following compact, as amended, is approved and this state is declared to be a party thereto; and agreements, covenants, and obligations therein are binding upon the State of Georgia:

“THE REGIONAL COMPACT

(as amended)

Whereas, The States who are parties hereto have during the past several years conducted careful investigation looking toward the establishment and maintenance of jointly owned and operated regional educational institutions in the Southern States in the professional, technological, scientific, literary and other fields, so as to provide greater educational advantages and facilities for the citizens of the several States who reside within such region; and

Whereas, Meharry Medical College of Nashville, Tennessee, has proposed that its lands, buildings, equipment, and the net income from its endowment be turned over to the Southern States, or to an agency acting in their behalf, to be operated as a regional institution for medical, dental and nursing education upon terms and conditions to be hereafter agreed upon between the Southern States and Meharry Medical College, which proposal, because of the present financial condition of the institution, has been approved by the said States who are parties hereto; and

Whereas, The said States desire to enter into a compact with each other providing for the planning and establishment of regional educational facilities;



Now, therefore, in consideration of the mutual agreements, covenants and obligations assumed by the respective States who are parties hereto (hereinafter referred to as 'States'), the said several States do hereby form a geographical district or region consisting of the areas lying within the boundaries of the contracting States which, for the purposes of this compact, shall constitute an area for regional education supported by public funds derived from taxation by the constituent States and derived from other sources for the establishment, acquisition, operation and maintenance of regional educational schools and institutions for the benefit of citizens of the respective States residing within the region so established as may be determined from time to time in accordance with the terms and provisions of this compact.

The States do further hereby establish and create a joint agency which shall be known as the Board of Control for Southern Regional Education (hereinafter referred to as the 'Board'), the members of which Board shall consist of the Governor of each State, ex officio, and four additional citizens of each State to be appointed by the Governor thereof, at least one of whom shall be selected from the field of education, and at least one of whom shall be a member of the legislature of that State. The Governor shall continue as a member of the Board during his tenure of office as Governor of the State, but the members of the Board appointed by the Governor shall hold office for a period of four years except that in the original appointments one Board member so appointed by the Governor shall be designated at the time of his appointment to serve an initial term of two years, one Board member to serve an initial term of three years, and the remaining Board member to serve the full term of four years, but thereafter the successor of each appointed Board member shall serve the full term of four years. Vacancies on the Board caused by death, resignation, refusal or inability to serve, shall be filled by appointment, by the Governor for the unexpired portion of the term. The officers of the Board shall be a Chairman, a Vice-Chairman, a Secretary, a Treasurer, and such additional officers as may be created by the Board from time to time. The Board shall meet annually and officers shall be elected to hold office until the next annual meeting. The Board shall have the right to formulate and establish bylaws not inconsistent with the provisions of this compact to govern its own actions in the performance of the duties delegated to it including the right to create and appoint an Executive Committee and a Finance Committee with such powers and authority as the Board may delegate to them from time to time. The Board may, within its discretion, elect as its Chairman a person who is not a member of the Board, provided such person resides within a signatory State, and upon such election such person shall become a member of the Board with all the rights and privileges of such membership.

It shall be the duty of the Board to submit plans and recommendations to the States from time to time for their approval and adoption by

appropriate legislative action for the development, establishment, acquisition, operation and maintenance of educational schools and institutions within the geographical limits of the regional area of the States, of such character and type and for such educational purposes, professional, technological, scientific, literary, or otherwise, as they may deem and determine to be proper, necessary or advisable. Title to all such educational institutions when so established by appropriate legislative actions of the States and to all properties and facilities used in connection therewith shall be vested in said Board as the agency of and for the use and benefit of the said States and the citizens thereof, and all such educational institutions shall be operated, maintained and financed in the manner herein set out, subject to any provisions or limitations which may be contained in the legislative acts of the States authorizing the creation, establishment and operation of such educational institutions.

In addition to the power and authority heretofore granted, the Board shall have the power to enter into such agreements or arrangements with any of the States and with educational institutions or agencies, as may be required in the judgment of the Board, to provide adequate services and facilities for graduate, professional, and technical education for the benefit of the citizens of the respective States residing within the region, and such additional and general power and authority as may be vested in the Board from time to time by legislative enactment of the said States.

Any two or more States who are parties of this compact shall have the right to enter into supplemental agreements providing for the establishment, financing and operation of regional educational institutions for the benefit of citizens residing within an area which constitutes a portion of the general region herein created, such institutions to be financed exclusively by such States and to be controlled exclusively by the members of the Board representing such States provided such agreement is submitted to and approved by the Board prior to the establishment of such institutions.

Each State agrees that, when authorized by the Legislature, it will from time to time make available and pay over to said Board such funds as may be required for the establishment, acquisition, operation and maintenance of such regional educational institutions as may be authorized by the States under the terms of this compact, the contribution of each State at all times to be in the proportion that its population bears to the total combined population of the States who are parties hereto as shown from time to time by the most recent official published report of the Bureau of Census of the United States of America; or upon such other basis as may be agreed upon.

This compact shall not take effect or be binding upon any State unless and until it shall be approved by proper legislative action of as many as



six or more of the States whose Governors have subscribed hereto within a period of eighteen months from the date hereof. When and if six or more States shall have given legislative approval to this compact within said eighteen months' period, it shall be and become binding upon such six or more States 60 days after the date of legislative approval by the sixth State and the Governors of such six or more States shall forthwith name the members of the Board from their States as hereinabove set out, and the Board shall then meet on call of the Governor of any State approving this compact, at which time the Board shall elect officers, adopt bylaws, appoint committees and otherwise fully organize. Other States whose names are subscribed hereto shall thereafter become parties hereto upon approval of this compact by legislative action within two years from the date hereof, upon such conditions as may be agreed upon at the time. Provided, however that with respect to any State whose constitution may require amendment in order to permit legislative approval of the compact; such State or States shall become parties hereto upon approval of this compact by legislative action within seven years from the date hereof, upon such conditions as may be agreed upon at the time.

After becoming effective this compact shall thereafter continue without limitation of time provided, however, that it may be terminated at any time by unanimous action of the States and provided further that any State may withdraw from this compact if such withdrawal is approved by its legislature, such withdrawal to become effective two years after written notice thereof to the Board accompanied by a certified copy of the requisite legislative action, but such withdrawal shall not relieve the withdrawing State from its obligations hereunder accruing up to the effective date of such withdrawal. Any State so withdrawing shall ipso facto cease to have any claim to or ownership of any of the property held or vested in the Board or to any of the funds of the Board held under the terms of this compact.

If any State shall at any time become in default in the performance of any of its obligations assumed herein or with respect to any obligation imposed upon said State as authorized by and in compliance with the terms and provisions of this compact, all rights, privileges and benefits of such defaulting State, its members on the Board and its citizens shall ipso facto be and become suspended from and after the date of such default. Unless such default shall be remedied and made good within a period of one year immediately following the date of such default this compact may be terminated with respect to such defaulting State by an affirmative vote of three-fourths of the members of the Board (exclusive of the members representing the State in default), from and after which time such State shall cease to be a party to this compact and shall have no further claim to or ownership of any of the property held by or vested in the Board or to any of the funds of the Board held under the terms of



this compact, but such termination shall in no manner release such defaulting State from any accrued obligation or otherwise affect this compact or the rights, duties, privileges or obligations of the remaining States thereunder.

In witness whereof this compact has been approved and signed by Governors of the several States, subject, to the approval of their respective legislatures in the manner hereinabove set out, as of the 8th day of February, 1948." (Ga. L. 1949, p. 56, § 1; Ga. L. 1957, p. 66.)

**Editor's notes.** — This compact was also affected by a 1955 resolution (Ga. L. 1955, p. 667) which approved the admission of Delaware and West Virginia as parties. As this resolution did not specifically amend language in this Code section, Ga. L. 1955, p. 667, does not appear in the historical citation.

By resolution (Ga. L. 1985, p. 351), the General Assembly approved the admission of the State of Oklahoma as a party to the Southern Regional Education Compact.

## ARTICLE 2

### COMPACT FOR EDUCATION

#### 20-6-20. Enactment; contents.

The Compact for Education is entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:

### COMPACT FOR EDUCATION

#### ARTICLE I. PURPOSE AND POLICY.

(a) It is the purpose of this Compact to:

(1) Establish and maintain close cooperation and understanding among executive, legislative, professional, educational and lay leadership on a nationwide basis at the State and local levels.

(2) Provide a forum for the discussion, development, crystallization and recommendation of public policy alternatives in the field of education.

(3) Provide a clearinghouse of information on matters relating to educational problems and how they are being met in different places throughout the nation, so that the executive and legislative branches of State government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.

(4) Facilitate the improvement of State and local educational systems so that all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative and quantitative advance in educational opportunities, methods and facilities.

(b) It is the policy of this Compact to encourage and promote local and State initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and States.

(c) The party States recognize that each of them has an interest in the quality and quantity of education furnished in each of the other States, as well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the nation, and because the products and services contributing to the health, welfare and economic advancement of each State are supplied in significant part by persons educated in other States.

#### ARTICLE II. STATE DEFINED.

As used in this Compact, "State" means a State, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

#### ARTICLE III. THE COMMISSION.

(a) The Education Commission of the States, hereinafter called the "Commission", is hereby established. The Commission shall consist of seven members representing each party State. One of such members shall be the Governor; two shall be members of the State legislature selected by its respective houses and serving in such manner as the legislature may determine; and four shall be appointed by and serve at the pleasure of the Governor, unless the laws of the State otherwise provide. If the laws of a State prevent legislators from serving on the Commission, six members shall be appointed and serve at the pleasure of the Governor, unless the laws of the State otherwise provide. In addition to any other principles or requirements which a State may establish for the appointment and service of its members of the Commission, the guiding principle for the composition of the membership on the Commission for each party State shall be that the members representing such State shall, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the State government, higher education, the State education system, local education, lay and professional, public and nonpublic educational leadership. Of those appointees, one shall be the head of a State agency or institution, designated by the Governor, having responsibility for one or more programs of public education. In

addition to the members of the Commission representing the party States, there may be not to exceed ten nonvoting commissioners selected by the steering committee for terms of one year. Such commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

(b) The members of the Commission shall be entitled to one vote each on the Commission. No action of the Commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the Commission are cast in favor thereof. Action of the Commission shall be only at a meeting at which a majority of the commissioners are present. The Commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the Commission may delegate the exercise of any of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV and adoption of the annual report pursuant to Article III(j).

(c) The Commission shall have a seal.

(d) The Commission shall elect annually, from among its members, a chairman, who shall be a Governor, a vice-chairman and a treasurer. The Commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the Commission, and together with the treasurer and such other personnel as the Commission may deem appropriate shall be bonded in such amount as the Commission shall determine. The executive director shall be secretary.

(e) Irrespective of the civil service, personnel, or other merit system laws of any of the party States, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Commission, and shall fix the duties and compensation of such personnel. The Commission in its bylaws shall provide for the personnel policies and programs of the Commission.

(f) The Commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or form any agency of two or more of the party jurisdictions or their subdivisions.

(g) The Commission may accept for any of its purposes and functions under this Compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any State, the United States, or any other governmental agency, or from any person, firm, association, foundation or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted



by the Commission pursuant to this paragraph or services borrowed pursuant to paragraph (f) of this Article shall be reported in the annual report of the Commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

(h) The Commission may establish and maintain such facilities as may be necessary for the transacting of its business. The Commission may acquire, hold, and convey real and personal property and any interest therein.

(i) The Commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The Commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party States.

(j) The Commission annually shall make to the Governor and legislature of each party State a report covering the activities of the Commission for the preceding year. The Commission may make such additional reports as it may deem desirable.

#### ARTICLE IV. POWERS.

In addition to authority conferred on the Commission by other provisions of the Compact, the Commission shall have the authority to:

(a) Collect, correlate, analyze and interpret information and data concerning educational needs and resources.

(b) Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems.

(c) Develop proposals for adequate financing of education as a whole and at each of its many levels.

(d) Conduct or participate in research of the types referred to in this Article in any instance where the Commission finds that such research is necessary for the advancement of the purposes and policies of this Compact, utilizing fully the resources of national associations, regional Compact organizations for higher education; and other agencies and institutions, both public and private.

(e) Formulate suggested policies and plans for the improvement of public education as a whole, or for any segment thereof, and make recommendations with respect thereto available to the appropriate governmental units, agencies and public officials.

(f) Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this Compact.

## ARTICLE V. COOPERATION WITH FEDERAL GOVERNMENT.

(a) If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the Commission by not to exceed ten representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, and may be drawn from any one or more branches of the federal government, but no such representative shall have a vote on the Commission.

(b) The Commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common educational policies of the States, and may advise with any such agencies or officers concerning any matter of mutual interest.

## ARTICLE VI. COMMITTEES.

(a) To assist in the expeditious conduct of its business when the full Commission is not meeting, the Commission shall elect a steering committee of thirty-two members, which, subject to the provisions of this Compact and consistent with the policies of the Commission, shall be constituted and function as provided in the bylaws of the Commission. One-fourth of the voting membership of the steering committee shall consist of Governors, one-fourth shall consist of legislators, and the remainder shall consist of other members of the Commission. A federal representative on the Commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of two years. The chairman, vice-chairman, and treasurer of the Commission shall be members of the steering committee and, anything in this paragraph to the contrary notwithstanding, shall serve during their continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the Commission at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than two terms as a member of the steering committee; provided that service for a partial term of one year or less shall not be counted toward the two term limitation.

(b) The Commission may establish advisory and technical committees composed of State, local and federal officials, and private persons to advise it with respect to any one or more of its functions. Any advisory or technical committee may on request of the States concerned, be established to consider any matter of special concern to two or more of the party States.

(c) The Commission may establish such additional committees as its bylaws may provide.

## ARTICLE VII. FINANCE.

(a) The Commission shall advise the Governor or designated officer or officers of each party State of its budget and estimated expenditures for such period as may be required by the laws of that party State. Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party States.

(b) The total amount of appropriation requests under any budget shall be apportioned among the party States. In making such apportionment, the Commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party States.

(c) The Commission shall not pledge the credit of any party States. The Commission may meet any of its obligations in whole or in part with funds available to it pursuant to Article III(g) of this Compact, provided that the Commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the Commission makes use of funds available to it pursuant to Article III(g) thereof, the Commission shall not incur any obligation prior to the allotment of funds by the party States adequate to meet the same.

(d) The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the Commission.

(e) The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the party States and by any persons authorized by the Commission.

(f) Nothing contained herein shall be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Commission.

## ARTICLE VIII. ELIGIBLE PARTIES; ENTRY INTO AND WITHDRAWAL.

(a) This Compact shall have as eligible parties all States, territories and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. In respect of any such jurisdiction not having a Governor, the term "Governor", as used in this Compact, shall mean the closest equivalent official of such jurisdiction.



(b) Any State or other eligible jurisdiction may enter into this Compact by legislative Act and it shall become binding thereon when it has adopted the same.

(c) Any party State may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the Governor of the withdrawing State has given notice in writing of the withdrawal to the Governors of all other party States. No withdrawal shall affect any liability already incurred by or chargeable to a party State prior to the time of such withdrawal.

ARTICLE IX. CONSTRUCTION AND SEVERABILITY.

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the Constitution of any State or of the United States, or the application thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the Constitution of any State participating therein, the Compact shall remain in full force and effect as to the State affected as to all severable matters. (Ga. L. 1977, p. 975, § 1.)

RESEARCH REFERENCES

**Am. Jur. 2d.** — 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 5, 6.      **C.J.S.** — 81A C.J.S., States, §§ 31, 32.

**20-6-21. Georgia members of Education Commission of the States.**

The seven members to represent this state on the Education Commission of the States as authorized under Article III of the Compact for Education shall consist of the following members: the Governor, who shall serve as chairman thereof; one member of the House of Representatives, who shall be selected by the Speaker of the House of Representatives; one member of the Senate, who shall be selected by the Lieutenant Governor; the chancellor of the University System of Georgia; the State School Superintendent; and two members who shall be appointed by the Governor and who shall serve at the pleasure of the Governor. (Ga. L. 1977, p. 975, § 2.)

RESEARCH REFERENCES

**C.J.S.** — 81A C.J.S., States, §§ 32, 120.

**20-6-22. Georgia Education Council.**

There is established the Georgia Education Council, which shall be composed of the members of the Education Commission of the States representing this state and such other persons appointed by the Governor at his discretion to serve at his pleasure. Such other persons shall be selected so as to be broadly representative of professional and lay interest within this state having the responsibilities for, and interest in, the improvement of education. The Governor, or a member of the council designated by the Governor, shall serve as chairman of the council. The council shall meet on the call of the Governor or a majority of its members, but in any event the council shall meet not less than three times in each year. The council may consider any and all matters relating to recommendations of the Education Commission of the States and the activities of the members in representing this state thereon. (Ga. L. 1977, p. 975, § 3.)

**RESEARCH REFERENCES**

**C.J.S.** — 81A C.J.S., States, § 120.

**20-6-23. Funds to carry out article; expenses of commission and council members.**

(a) Funds appropriated or otherwise available to the executive branch of government of this state may be expended for the purpose of carrying out this article.

(b) The members of the Education Commission of the States representing this state and the members of the Georgia Education Council shall serve without pay; provided, however, that they shall be reimbursed, from funds appropriated therefor, for their reasonable and necessary travel, meals, lodging, and other necessary expenses incurred in the performance of their official duties. (Ga. L. 1977, p. 975, § 4.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 63C Am. Jur. 2d, Public Officers and Employees, § 287 et seq.

**C.J.S.** — 67 C.J.S., Officers and Public Employees, § 225.

**20-6-24. Filing of commission's bylaws.**

Pursuant to Article III(i) of the compact, the Education Commission of the States shall file a copy of its bylaws and any amendment thereto with the Secretary of State. (Ga. L. 1977, p. 975, § 5.)

**CHAPTER 7**

**LEGISLATIVE EDUCATIONAL RESEARCH COUNCIL**

Sec.  
20-7-1 through 20-7-5 [Repealed].

**20-7-1 through 20-7-5.**

Repealed by Ga. L. 1986, p. 827, § 1, effective April 3, 1986.

**Editor's notes.** — This chapter, consisting of Code Sections 20-7-1 through 20-7-5, was based on Ga. L. 1965, p. 711, §§ 1 through 4; Ga. L. 1966, p. 724, § 1;

Ga. L. 1972, p. 1248, §§ 1 through 4; Ga. L. 1978, p. 1725, § 1; Ga. L. 1982, p. 684; Ga. L. 1986, p. 10.



## CHAPTER 8

## CAMPUS POLICEMEN

| Sec.    |  | Sec.    |   |
|---------|--|---------|---|
| 20-8-1. | Definitions.   |         | each public school system of the state; certification; carrying of firearms or weapons. |
| 20-8-2. | Law enforcement powers.                                |         |   |
| 20-8-3. | Certification required.                                |         |   |
| 20-8-4. | Exemption of university system campus policemen.       | 20-8-6. | Reports of criminal gang activity on or adjacent to campus.                             |
| 20-8-5. | Law enforcement powers of school security personnel in | 20-8-7. | Public disclosure of campus police records.   |

## 20-8-1. Definitions.

As used in this chapter, the term:

(1) "Campus" means the grounds and buildings owned or occupied by a college or university or the grounds and buildings of a school or training facility operated by or under the authority of the State Board of Education. The term "campus" shall also include any public or private property within 500 yards of the property of an educational facility and one-quarter mile of any public street or public sidewalk connecting different buildings of the same educational facility when the property or buildings of the educational facility are located within any county in this state having a population of 400,000 or more according to the United States decennial census of 1970 or any future such census.

(2) "Campus policeman" means an employee of an educational facility whose duties include the enforcement of the laws of this state; the preservation of public order; the protection of life and property; the prevention, detection, or investigation of crime; or any combination thereof.

(3) "College or university" means an accredited, nonproprietary, public or private educational institution of higher learning located in this state.

(4) "Educational facility" means a college or university or a school or training facility operated by or under the authority of the State Board of Education. (Ga. L. 1977, p. 1160, § 1; Ga. L. 1979, p. 1323, § 1; Ga. L. 1981, p. 806, § 1; Ga. L. 1984, p. 596, § 1.)

## JUDICIAL DECISIONS

**Records of private university's police force not subject to public records acts.** — Records of a campus police force of a private university were not

subject to disclosure under the Open Records Act, O.C.G.A. § 50-18-70 et seq., as the university was a private institution that did not receive any funding from the

state, the campus police were employees of that entity pursuant to the authority of O.C.G.A. § 20-8-2, and the fact that the police performed a public function did not make their records into public records; the fact that the campus police were given authority to perform certain functions by the Campus Policemen Act, O.C.G.A. § 20-8-1 et seq., and the Georgia Peace Officer Standards and Training Act, O.C.G.A. § 35-8-1 et seq., did not make them officers or employees of a public office or agency for purposes of the Open Records Act. *The Corp. of Mercer Univ. v. Barrett & Farahany, L.L.P.*, 271 Ga. App. 501, 610 S.E.2d 138 (2005).

**Campus police authority.** — Trial court erred in granting defendant's motion to suppress the fruits of a traffic stop, which arose when defendant's vehicle was observed by a campus police officer to be weaving, the officer followed defendant's vehicle off campus, and then a stop and arrest was effected as it was unclear whether the officer was following defendant in hot pursuit at the time of the stop and arrest; the campus police officer had authority under O.C.G.A. § 20-8-1 et seq., to follow defendant off-campus and beyond the officer's jurisdiction, if the officer

was in hot pursuit, based on the officer's articulable suspicion that a criminal offense had been committed, as it was clear from a review of the statutory language of O.C.G.A. § 20-8-1 et seq. that it applied to campus officers. *State v. Durr*, 274 Ga. App. 438, 618 S.E.2d 117 (2005).

**Officer with college police had no right to appear before grand jury.** — Trial court did not err in finding that the defendant, who was an officer with a college police department, was not entitled to be present and make a statement pursuant to O.C.G.A. §§ 17-7-52(a) and 45-11-4 when the defendant's case was presented to the grand jury because the indictment did not allege that the crimes occurred while the defendant was performing the defendant's duties; the defendant was not on campus as defined by O.C.G.A. § 20-8-1(1), and the record did not show that the defendant's official duties as a campus police officer included the commission of the acts at issue, while the defendant was off duty and engaged in leisure activities outside of the defendant's jurisdiction. *Worthy v. State*, 307 Ga. App. 297, 704 S.E.2d 808 (2010).

**Cited in** *Tabor v. State*, 203 Ga. App. 60, 416 S.E.2d 138 (1992).

## OPINIONS OF THE ATTORNEY GENERAL

**Application to private colleges and universities.** — Ga. L. 1977, p. 1160 does apply to private colleges and universities, but only when the college or university desires to authorize their campus police officers to exercise law enforcement powers including the power to arrest. In that case, the law requires that the campus police officer be certified by the Georgia Peace Officer Standards and Training Council. 1980 Op. Att'y Gen. No. U80-17.

**Application to school security personnel employed by public board of education.** — School security personnel

employed by the board of education of a county or an independent board of education of a municipality for the various public schools, who are authorized by those boards to have law enforcement powers, are not campus police pursuant to paragraph (2) of O.C.G.A. § 20-8-1. 1989 Op. Att'y Gen. 89-29.

**Inapplicable to university system officers.** — O.C.G.A. Ch. 8, T. 20 has no application to campus police officers and security officers of the university system. 1990 Op. Att'y Gen. No. 90-11.

## 20-8-2. Law enforcement powers.

On the campus of an educational facility, a campus policeman employed by such educational facility who is certified in accordance with Code Section 20-8-3 and when authorized by the governing body or authority of such educational facility shall have the same law enforce-

ment powers, including the power of arrest, as a law enforcement officer of the local government with police jurisdiction over such campus. (Ga. L. 1977, p. 1160, § 2; Ga. L. 1979, p. 1323, § 1.)

**Cross references.** — Campus police of the university system, § 20-3-72.

## JUDICIAL DECISIONS

**Records of private university's police force.** — Records of a campus police force of a private university were not subject to disclosure under the Open Records Act, O.C.G.A. § 50-18-70 et seq., as the university was a private institution that did not receive any funding from the state, the campus police were employees of that entity pursuant to the authority of O.C.G.A. § 20-8-2, and the fact that the police performed a public function did not make their records into public records; the fact that the campus police were given authority to perform certain functions by the Campus Policemen Act, O.C.G.A. § 20-8-1 et seq., and the Georgia Peace Officer Standards and Training Act, O.C.G.A. § 35-8-1 et seq., did not make them officers or employees of a public office or agency for purposes of the Open Records Act. *The Corp. of Mercer Univ. v. Barrett & Farahany, L.L.P.*, 271 Ga. App. 501, 610 S.E.2d 138 (2005).

**Officer with college police had no right to appear before grand jury.** — Trial court did not err in finding that the defendant, who was an officer with a college police department, was not entitled to be present and make a statement pursuant to O.C.G.A. §§ 17-7-52(a) and 45-11-4 when the officer's case was presented to the grand jury because the indictment did not allege that the crimes occurred while the defendant was performing the defendant's duties; the defendant was not on campus as defined by O.C.G.A. § 20-8-1(1), and the record did not show that the defendant's official duties as a campus police officer included the commission of the acts at issue, while the defendant was off duty and engaged in leisure activities outside of the defendant's jurisdiction. *Worthy v. State*, 307 Ga. App. 297, 704 S.E.2d 808 (2010).

**Cited in** *Tabor v. State*, 203 Ga. App. 60, 416 S.E.2d 138 (1992).

### 20-8-3. Certification required.

As a condition precedent to the exercise of law enforcement powers pursuant to Code Section 20-8-2, a campus policeman must be certified by the Georgia Peace Officer Standards and Training Council as having met the qualifications and having completed the basic training requirements for a peace officer under Article 2 of Chapter 2 of Title 35. All costs incurred in such certification and training shall be paid by the educational facility employing the campus policeman. This chapter is permissive and shall not require the certification of campus policemen by the Georgia Peace Officer Standards and Training Council. The certification of a campus policeman by the Georgia Peace Officer Standards and Training Council does not require that the campus policeman so certified exercise the powers provided in Code Section 20-8-2. (Ga. L. 1977, p. 1160, § 3; Ga. L. 1979, p. 1323, § 2.)



**JUDICIAL DECISIONS**

**Cited in** Tabor v. State, 203 Ga. App. 60, 416 S.E.2d 138 (1992).

**20-8-4. Exemption of university system campus policemen.**

A campus policeman exercising the power of arrest pursuant to Code Section 20-3-72 providing campus policemen and other security personnel of the University System of Georgia with arrest powers for offenses committed upon university system property shall be exempt from this chapter. (Ga. L. 1977, p. 1160, § 4.)

**20-8-5. Law enforcement powers of school security personnel in each public school system of the state; certification; carrying of firearms or weapons.**

(a) In each public school system in this state, school security personnel employed by the board of education of a county or an independent board of education of a municipality for the various public schools thereof who are certified pursuant to subsection (b) of this Code section and who are authorized by the board of education of that county or the independent board of education of that municipality shall have the same law enforcement powers on school property, including the power of arrest, as law enforcement officers of that respective county or municipality.

(b) As a condition precedent to the exercise of law enforcement powers pursuant to subsection (a) of this Code section, school security personnel must be certified by the Georgia Peace Officer Standards and Training Council as having met the qualifications and having completed the basic training requirements for a peace officer under Chapter 8 of Title 35. The certification of school security personnel by the Georgia Peace Officer Standards and Training Council does not require that such security personnel exercise the powers provided in subsection (a) of this Code section.

(c) The provisions of this Code section shall not prohibit a board of education of a county or an independent board of education of a municipality from employing school security personnel without law enforcement powers.

(d) School security personnel who are certified by the Georgia Peace Officer Standards and Training Council may be authorized by a local board of education to carry a standard issue firearm or weapon generally used for law enforcement purposes for the purpose of carrying out law enforcement duties. (Code 1933, § 32-913, enacted by Ga. L. 1982, p. 515, § 1; Code 1981, § 20-8-5, enacted by Ga. L. 1982, p. 515,

§ 2; Ga. L. 1983, p. 3, § 16; Ga. L. 1986, p. 1549, § 1; Ga. L. 1988, p. 612, § 16; Ga. L. 1999, p. 362, § 4.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1988, “Training” was substituted for “Tranining” in subsection (d).

### JUDICIAL DECISIONS

**Pursuit of student beyond school grounds.** — As a security officer was on school property when a fellow officer told the security officer that a truant juvenile was hiding behind a house, the juvenile could be pursued on suspicion of hindering an officer in the lawful discharge of duties in violation of O.C.G.A. § 16-10-24, even if the officer left school grounds, as the officer did so in hot pursuit of a suspected offender. In the Interest of M.P., 279 Ga. App. 344, 631 S.E.2d 383 (2006).

### OPINIONS OF THE ATTORNEY GENERAL

**Counties of less than 100,000 persons.** — School systems in counties with a population of less than 100,000 may not authorize their school security employees to carry firearms; however, law enforcement personnel who are authorized to carry firearms from some source other than the school board may provide security at school functions. 1999 Op. Att’y Gen. No. U99-1.

### 20-8-6. Reports of criminal gang activity on or adjacent to campus.

Each educational facility which employs campus policemen, including institutions of the University System of Georgia, shall report to the Georgia Bureau of Investigation and to the local law enforcement agency incidents of criminal gang activity as defined by Code Section 16-15-3 which occur on or adjacent to the campus of such educational facility. (Code 1981, § 20-8-6, enacted by Ga. L. 1998, p. 270, § 11.)

**Law reviews.** — For review of 1998 legislation relating to crimes and offenses, see 15 Ga. St. U. L. Rev. 80 (1998).

### 20-8-7. Public disclosure of campus police records.

Law enforcement records created, received, or maintained by campus policemen that relate to the investigation of criminal conduct and crimes as defined under Georgia law and which are not subject to protection from disclosure by any other Georgia law shall be made available within a reasonable time after request for public inspection and copying. (Code 1981, § 20-8-7, enacted by Ga. L. 2006, p. 519, § 5/HB 1302.)

**Editor’s notes.** — Ga. L. 2006, p. 519, § 7/HB 1302, not codified by the General Assembly, provides that: “Any offense committed before July 1, 2006, shall be

punishable as provided by the statute in effect at the time the offense was committed.”

Ga. L. 2006, p. 519, § 7/HB 1302, not

codified by the General Assembly, provides that this Code section applies to all crimes committed on or after July 1, 2006.



## CHAPTER 9

**EYE PROTECTIVE DEVICES FOR STUDENTS,  
TEACHERS, AND VISITORS**

|         |  |   |
|---------|--|---|
| Sec.    |  | courses and laboratories; furnishing devices. |
| 20-9-1. | Rules and regulations as to eye protective devices for certain |   |

**20-9-1. Rules and regulations as to eye protective devices for certain courses and laboratories; furnishing devices.**

(a) The State Board of Education and the Board of Regents of the University System of Georgia shall promulgate and adopt rules and regulations to ensure that every student and teacher participating in or observing any of the following courses of instruction in any school, college, university, vocational-technical school, or other educational institution within this state shall wear appropriate industrial quality eye protective devices at all times while participating in or observing such courses of instruction:

(1) Vocational, technical, industrial arts, chemical, physical, or chemical-physical courses of instruction involving exposure to:

(A) Hot molten metal or other molten materials;

(B) Milling, sawing, turning, shaping, cutting, grinding, or stamping of any solid materials;

(C) Heat treatment, tempering, or kiln firing of any metal or other materials;

(D) Gas or electric arc welding or other forms of welding processes;

(E) Repair or servicing of any vehicle; or

(F) Caustic or explosive materials;

(2) Chemical, physical, or combined chemical-physical laboratories involving caustic or explosive materials, hot liquids or solids, injurious radiations, or other hazards; or

(3) Such other courses as shall be determined by the state board or the board of regents.

(b) The devices required by this Code section shall be furnished by the school, college, university, vocational-technical school, or other educational institution within this state for all students and teachers and shall be furnished for all visitors to such shops and laboratories, as provided by rules and regulations adopted by the state board and the board of regents. (Ga. L. 1974, p. 971, § 1.)

**Administrative rules and regulations.** — Eye protection, Official Compilation of the Rules and Regulations of the

State of Georgia, Georgia Department of Education, Secondary Vocational Education, Sec. 160-4-3-10.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools, § 489.

**C.J.S.** — 78 C.J.S., Schools and School Districts, §§ 665 et seq., 679 et seq.

## CHAPTER 10

## FARMERS' INSTITUTES

Sec.

20-10-1. Board of Regents of the University System of Georgia to have institutes conducted.

**20-10-1. Board of Regents of the University System of Georgia to have institutes conducted.**

The Board of Regents of the University System of Georgia shall have conducted throughout the state each year, during the season most convenient to the agriculturists, a series of farmers' institutes for the instruction of the citizens of this state in better methods of agriculture in its various branches. These institutes shall be held at such times and places as the board may direct. The board shall make such rules and regulations as it may deem proper for organizing and conducting such institutes. In selecting lecturers for said institutes, preference shall be given to practical, successful farmers possessing aptitude for the work. The programs of such institutes shall be so arranged as to present the results of the most recent investigations in practical agriculture. (Ga. L. 1889, p. 166, § 1; Civil Code 1895, § 1302; Civil Code 1910, § 1399; Ga. L. 1931, p. 7, § 45; Code 1933, § 32-201.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 3 Am. Jur. 2d, Agriculture, § 20.

**C.J.S.** — 3 C.J.S., Agriculture, § 15.



CHAPTER 11

GEORGIA TECH RESEARCH INSTITUTE

|  |   |
|--|---|
| Sec.   | Sec.  |
| 20-11-1. Creation; research institute and field offices.   | 20-11-5. Appropriations for research institute; payment.      |
| 20-11-2. Duties.   | 20-11-6. Conformance to conditions of federal aid.            |
| 20-11-3. Center for industrial development; industrial extension service field offices or substations. | 20-11-7. Change of name to "Georgia Tech Research Institute." |
| 20-11-4. Bulletins.  |   |

**Editor's notes.** — Ga. L. 1984, p. 1675, § 1 enacted Code Section 20-11-7, which authorized the President of the Georgia Institute of Technology to change the name of the Engineering Experiment Station to the Georgia Tech Research Institute. Section 2 of the 1984 Act provided as follows: "If the President of the Georgia Institute of Technology exercises the authority provided by quoted Code Section 20-11-7 of Section 1 of this Act, then on the effective date of the change in the name of the Engineering Experiment Station to the Georgia Tech Research Institute, as shown on the notice sent to the Board of Regents of the University System of Georgia and to the Secretary of State as provided by said Code Section 20-11-7, the

words 'Engineering Experiment Station' shall be stricken wherever the same appear in Code Sections 20-11-1 through 20-11-6 of Chapter 11 of Title 20 of the Official Code of Georgia Annotated and the words 'Georgia Tech Research Institute' shall be inserted in lieu of said stricken words." The written notification from the President of the Georgia Institute of Technology stated that the effective date of the change of name would be October 1, 1984. The Code sections in this chapter were further amended by Ga. L. 1985, p. 149, § 20, effective February 12, 1985, to confirm the Ga. L. 1984, p. 1675, § 1 changes and to make further conforming revisions.

20-11-1. Creation; research institute and field offices.

To aid in the promotion of scientific, engineering, and industrial research; to encourage the more complete development and utilization of the natural resources of this state; to advance science, technology, and education; to encourage further industrial and economic development; to provide technical advice and assistance to business and industry; to provide an industrial extension service to meet the technical, informational, and other needs of industry and local development groups; and in order to promote the general welfare of the people of this state through a program of scientific, engineering, and industrial research, there is created at and in connection with the Georgia Institute of Technology a department to be known and designated as the "Georgia Tech Research Institute." The department shall be composed of a research institute to be located at the Georgia Institute of Technology and such field offices or substations as provided in this chapter. (Ga. L. 1919, p. 367, § 1; Code 1933, § 32-301, enacted by Ga.

L. 1960, p. 1131, § 1; Ga. L. 1984, p. 1675, § 2; Ga. L. 1985, p. 149, § 20.)

**Editor's notes.** — Ga. L. 1960, p. 1131, § 7, not codified by the General Assembly, provides: "The Engineering Experiment Station [now Georgia Tech Research Institute] provided for herein shall be a contin-

uation of the station existing at the time of the effective date of this Act [March 17, 1960], and such existing station shall not be considered to be abolished by this Act."

## 20-11-2. Duties.

It shall be the duty of the Georgia Tech Research Institute to:

(1) Conduct original research; to perform and verify experiments; to make investigations in any and all branches of engineering, manufacturing, and the industries and the sciences related thereto; and to compile data relating to such research for their promotion in the interests of the people;

(2) Formulate and implement a program of research which will seek to enhance the economic and industrial development of this state through the search for new or improved products, devices, and processes; through the development of new uses for Georgia's existing and potential resources; through the pursuit of scientific knowledge and learning and the dissemination thereof; through the search for new economic opportunities; and through technical assistance to the existing and future industrial community;

(3) Render assistance to national programs of science, technology, and preparedness; and

(4) Conduct such other research, experiments, and investigations bearing upon the industries, occupations, and public welfare of the people as may in each case be deemed advisable, practicable, and within the resources of the research institute. (Ga. L. 1919, p. 367, § 2; Code 1933, § 32-302, enacted by Ga. L. 1960, p. 1131, § 2; Ga. L. 1984, p. 1675, § 2; Ga. L. 1985, p. 149, § 20.)

## 20-11-3. Center for industrial development; industrial extension service field offices or substations.

A center for industrial development shall be created in connection with the Georgia Tech Research Institute for the purpose of meeting more effectively the needs of business and industry and of local groups engaged in economic development and furthering and strengthening of the research institute's present program, including the establishment of such additional research and related services as may be necessary to make possible the more effective development of the state's industrial resources and potentials. To utilize effectively the talents of the

research institute's staff of scientists, engineers, and technicians on the needs of local development groups and of business and industry, the research institute's present program shall be extended as rapidly as its financial condition will permit to provide a state-wide industrial extension service through the establishment of field offices or substations. The location of each field office or substation shall be determined by the director of the Georgia Tech Research Institute, who shall choose each location on the basis of its advantages to the research institute's overall program and the further development of the state's resources. In addition to being responsible for providing technical advice and assistance to local development groups and to established business and industry, each field office or substation shall have as its further purpose the collection of data on local resources and the evaluation of existing and potential industrial opportunities. (Code 1933, § 32-302, enacted by Ga. L. 1960, p. 1131, § 3; Ga. L. 1984, p. 1675, § 2; Ga. L. 1985, p. 149, § 20.)

#### **20-11-4. Bulletins.**

Bulletins giving results of the research, investigations, and experiments or reports of progress shall be published at the Georgia Tech Research Institute at least once in 12 months. Copies shall be sent to such persons, newspapers, institutions, and libraries interested in research, engineering, manufacturing, and industry as may request them as far as the means of the research institute will permit. Copies of the reports are to be sent, free of all charges, to the state geologist and other state officials requesting them. (Ga. L. 1919, p. 367, § 3; Code 1933, § 32-303; Code 1933, § 32-304, enacted by Ga. L. 1960, p. 1131, § 4; Ga. L. 1984, p. 1675, § 2; Ga. L. 1985, p. 149, § 20.)

#### **20-11-5. Appropriations for research institute; payment.**

All moneys appropriated by the General Assembly for the establishment and operation of the Georgia Tech Research Institute, together with any sums which may be appropriated by the Congress or apportioned to the state from the Treasury of the United States for purposes substantially the same as specified in this chapter, shall be paid to the Board of Regents of the University System of Georgia for the conduct of the work of the research institute authorized by this chapter, provided that the board shall formally present to the Governor its acceptance of the conditions of this chapter. (Ga. L. 1919, p. 367, § 4; Ga. L. 1931, p. 7, § 48; Code 1933, § 32-304; Code 1933, § 32-305, enacted by Ga. L. 1960, p. 1131, § 5; Ga. L. 1984, p. 1675, § 2; Ga. L. 1985, p. 149, § 20.)

#### **20-11-6. Conformance to conditions of federal aid.**

In the event of Congress making appropriations for the conduct of work similar to that specified in this chapter, the work of the Georgia



Tech Research Institute shall conform to the requirements imposed as the conditions for such federal appropriations as may be accepted by the General Assembly in order that the work of the research institute may be aided and extended by means of such federal appropriations for scientific, engineering, and industrial research. (Ga. L. 1919, p. 367, § 5; Code 1933, § 32-305; Code 1933, § 32-306, enacted by Ga. L. 1960, p. 1131, § 6; Ga. L. 1984, p. 1675, § 2; Ga. L. 1985, p. 149, § 20.)

**20-11-7. Change of name to “Georgia Tech Research Institute.”**

The president of the Georgia Institute of Technology is authorized at any time not later than January 1, 1985, in his discretion, to change the name of the Engineering Experiment Station to “Georgia Tech Research Institute” by giving written notice of such change and of the effective date thereof to the Board of Regents of the University System of Georgia and the Secretary of State of the State of Georgia. The Engineering Experiment Station shall be known and designated as the “Georgia Tech Research Institute” from and after the effective date specified in such notice. The president and his delegate or delegates are authorized to give such additional notice of the name change and the effective date thereof to such other persons and in such manner as the president may deem necessary or desirable. (Code 1981, § 20-11-7, enacted by Ga. L. 1984, p. 1675, § 1; Ga. L. 1985, p. 149, § 20.)

## CHAPTER 12

MARINE RESOURCES EXTENSION CENTERS AND  
INSTITUTE FOR OCEANOGRAPHIC STUDIES

|          |  |          |   |
|----------|--|----------|---|
| Sec.     |  | Sec.     |   |
| 20-12-1. | Definitions.   | 20-12-5. | Leasing projects.   |
| 20-12-2. | Development of marine resources extension centers and institute for oceanographic studies. | 20-12-6. | Rentals and other charges; contracts as to use of projects. |
| 20-12-3. | Powers of board of regents.  | 20-12-7. | Rules and regulations for projects.                         |
| 20-12-4. | Cooperation with other states.   | 20-12-8. | Annual reports.   |
|          |  | 20-12-9. | Liberal construction.                                       |

**Cross references.** — Powers and duties of Department of Natural Resources relating to development and utilization of coastal and offshore waters and lands,

§ 12-5-210 et seq. Duty of Department of Industry and Trade to promote marine research and industrial activities, § 50-7-30.

## 20-12-1. Definitions.

As used in this chapter, the term:

(1) "Board of regents" means the Board of Regents of the University System of Georgia.

(2) "Facility" means a structure or complex of structures approved by the board of regents, including the land thereon, for the purpose of pursuing research, academic, industrial, and other related activities conducted by local, state, or federal government agencies; the university system or any of its component parts; other public or private colleges and universities; nonprofit organizations; foundations; corporations; and private business firms.

(3) "Project" means one or more facilities as defined in paragraph (2) of this Code section.

(4) "University system" means the University System of Georgia. (Ga. L. 1967, p. 12, § 3; Ga. L. 1972, p. 1015, § 2203.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 15A Am. Jur. 2d, Colleges and Universities, § 1.

**C.J.S.** — 14A C.J.S., Colleges and Universities, §§ 1, 2.

**20-12-2. Development of marine resources extension centers and institute for oceanographic studies.**

The board of regents shall establish and operate one or more marine resources extension centers and an institute for oceanographic studies, known as the Oceanographic Research Center. The board of regents may delegate to one or more of its members or to its officers, agents, and employees such powers and duties as it may deem proper to carry out the purposes of this chapter. The board of regents may contract with any department, board, or agency of the state, local, or federal government; public or private colleges and universities not component units of the university system; nonprofit organizations; foundations; corporations; private business firms; and individuals as shall be consonant with all the purposes of this chapter. (Ga. L. 1967, p. 12, § 1; Ga. L. 1969, p. 754, § 1; Ga. L. 1972, p. 1015, § 2203.)

**20-12-3. Powers of board of regents.**

For the purposes of this chapter, the board of regents shall have the powers:

(1) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of any real and personal property;

(2) To appoint such additional officers, who need not be members of the board of regents, as the board of regents deems advisable; to employ such experts, employees, and agents as may be, in its judgment, necessary; to fix their compensation; and to promote and discharge such officers, employees, and agents;

(3) To make such contracts as the legitimate and necessary purposes of this chapter shall require and to execute and perform such facility lease contracts with local, state, or federal government agencies; public or private colleges and universities not component units of the university system; nonprofit organizations; foundations; corporations; private business firms; and individuals as shall be consonant with all the purposes of this chapter; and to make all contracts necessary for the projects as defined and described in this article, provided that all contracts for the construction of projects shall be let by public bid upon plans and specifications approved by the board of regents or its successors in office;

(4) To construct, erect, repair, own, maintain, add to, extend, improve, operate, and manage projects, as defined in Code Section 20-12-1, to be located on property owned by the board of regents;

(5) To contract with other state departments, boards, commissions, agencies, bureaus, and authorities to provide for the financing or construction of projects, or both;



(6) To exercise any power usually possessed by other departments of the executive branch of state government;

(7) To study and plan a complex which may include research, academic, industrial, and other related activities conducted by local, state, or federal government agencies; the university system or any of its component units; other public or private colleges and universities; nonprofit organizations; foundations; corporations; private business firms; and individuals;

(8) To establish criteria for the participation of these various entities in the complex, to promote their participation in the complex, and to negotiate with such entities to arrange for their location in the complex;

(9) To receive funds, facilities, land, or other support from local, state, and federal governments; from nonprofit organizations and foundations; and from business firms and individuals, in any form, such as grants, allocations, gifts, exchanges, or rentals; and

(10) To establish and operate one or more marine resources extension centers and in connection therewith furnish instructions and practical demonstrations in the application of marine science and techniques to vocational, industrial, and recreational utilization and development of coastal and offshore lands, waters, and resources; to contract with any public agency, department, or instrumentality or any private person or corporation for the furnishing of instructions and demonstrations in accordance with the direction and under the supervision of the board of regents. (Ga. L. 1967, p. 12, § 4; Ga. L. 1969, p. 754, § 3; Ga. L. 1972, p. 1015, § 2203; Ga. L. 1992, p. 6, § 20.)

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 2 Am. Jur. 2d, Administrative Law, §§ 75, 78. 64 Am. Jur. 2d, Public Works and Contracts, § 9.  
**C.J.S.** — 14A C.J.S., Colleges and Universities, § 12 et seq. 73 C.J.S., Public Administrative Law and Procedure, §§ 50, 70.

### 20-12-4. Cooperation with other states.

In the event that other states may desire to collaborate in the development of the complex, the board of regents is authorized to enter into agreements with the agencies or institutions of any other states for the participation in, or the joint use of, the complex. (Ga. L. 1967, p. 12, § 6; Ga. L. 1972, p. 1015, § 2203.)

**20-12-5. Leasing projects.**

The board of regents is authorized, as owner of such projects as it may construct, to offer, as lessor, to lease such projects for terms not exceeding 50 years from the date of execution. Such leases may provide for the advance payment of agreed sums of yearly or monthly rental, which payments may begin on execution of leases, such dates being prior to the completion of such projects or otherwise, and may obligate the lessees or their successors, or both, to pay such sums for the lease of such projects and in addition, to obligate themselves to pay for or perform all maintenance, upkeep, and repair or any other reasonable expense of such projects, provided that no such lease shall be binding upon or a valid act of the board of regents as to a lessee where the lessee is any state government agency until and unless the board of regents shall have secured a certificate from the state auditor that the yearly rental obligations under such lease shall fall within the existing power of such state agency to make such obligations. (Ga. L. 1967, p. 12, § 7; Ga. L. 1972, p. 1015, § 2203.)

**20-12-6. Rentals and other charges; contracts as to use of projects.**

The board of regents is authorized to fix rentals and other charges which the lessees shall pay to the board of regents for the use of each project, to charge and collect them, and to lease and make contracts with lessees with respect to the use of such lessees of any project. (Ga. L. 1967, p. 12, § 8; Ga. L. 1972, p. 1015, § 2203.)

**20-12-7. Rules and regulations for projects.**

The board of regents shall prescribe rules and regulations for the operation of each project constructed under this chapter, including rules and regulations to ensure maximum use of each such project. (Ga. L. 1967, p. 12, § 9; Ga. L. 1972, p. 1015, § 2203.)

**20-12-8. Annual reports.**

The board of regents shall make an annual report to the General Assembly which shall include a report on all funds and properties received or disbursed under this chapter. The board of regents shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the report in the manner which it deems to be most effective and efficient. (Ga. L. 1967, p. 12, § 10; Ga. L. 2005, p. 1036, § 18/SB 49.)

**20-12-9. Liberal construction.**

This chapter, being for the welfare of the state and its inhabitants, shall be liberally construed to effect its purposes. (Ga. L. 1967, p. 12, § 11.)



## CHAPTER 13

# **GEORGIA PUBLIC TELECOMMUNICATIONS COMMISSION ACT**

|          |   |           |   |
|----------|---|-----------|---|
| Sec.     |   | Sec.      |   |
| 20-13-1. | Establishment of Georgia Public Telecommunications Commission.                | 20-13-7.  | Executive director; functions; powers; duties.  |
| 20-13-2. | Membership; appointment; terms of office; election of chairperson; vacancies. | 20-13-8.  | Licensure.                                      |
| 20-13-3. | Remuneration for members.   | 20-13-9.  | Content of instructional television.            |
| 20-13-4. | Meetings.   | 20-13-10. | Personnel; status as state employees; benefits. |
| 20-13-5. | Functions; responsibilities.  | 20-13-11. | Powers.   |
| 20-13-6. | Executive director; appointment.  | 20-13-12. | Purpose; exemptions.                            |

## **20-13-1. Establishment of Georgia Public Telecommunications Commission.**

(a) There is created a body corporate and politic to be known as the Georgia Public Telecommunications Commission which shall be deemed to be an instrumentality of the State of Georgia and a public corporation; and by that name, style, and title such body may contract and be contracted with, sue and be sued, implead and be impleaded, and complain and defend in all courts of this state.

(b) The commission shall have perpetual existence. Any change in name or composition of the commission shall in no way affect the vested rights of any person under this chapter or impair the obligations of any contracts existing under this chapter.

(c) The commission shall be attached to the Board of Regents of the University System of Georgia for administrative purposes only, as provided for in Code Section 50-4-3. (Code 1981, § 20-13-1, enacted by Ga. L. 1990, p. 594, § 1.)

## **20-13-2. Membership; appointment; terms of office; election of chairperson; vacancies.**

(a) The commission shall be composed of nine members, who shall be appointed by the Governor from the general public. No person may serve on the commission who is also an official, officer, or employee of the state or any of its agencies or instrumentalities or an official, officer, employee, or representative of any public school system.

(b) The term of office for members shall be four years, except for those members whose initial terms begin on July 1, 2001, which terms

shall expire on June 30, 2002. Thereafter, their successors shall serve for terms of four years and until a successor is appointed and qualified.

(c) The commission shall elect one of its members as chairperson.

(d) Vacancies which occur in the membership of the commission shall be filled by the Governor. (Code 1981, § 20-13-2, enacted by Ga. L. 1990, p. 594, § 1; Ga. L. 2001, p. 328, § 1.)

**Law reviews.** — For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 79 (2001).

**20-13-3. Remuneration for members.**

The members of the commission shall receive for each day of service expended as a member of the commission the per diem and expense allowances authorized for members of other state boards and commissions, as provided by Code Section 45-7-21. (Code 1981, § 20-13-3, enacted by Ga. L. 1990, p. 594, § 1; Ga. L. 2001, p. 328, § 2.)

**Law reviews.** — For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 79 (2001).

**20-13-4. Meetings.**

The commission shall hold regular meetings bimonthly or as necessary as determined by the chairperson. Additional meetings may be called by the chairperson or at the request of three or more of the members. (Code 1981, § 20-13-4, enacted by Ga. L. 1990, p. 594, § 1.)

**20-13-5. Functions; responsibilities.**

(a) The Georgia Public Telecommunications Commission is declared to be a public charitable organization created, designed, and intended for the purpose of providing educational, instructional, and public broadcasting services to the citizens of the State of Georgia and making available those services to the citizens of the several states as deemed necessary and feasible.

(b) The commission is authorized to accept and utilize gifts, contributions of money, property, facilities, services, donations, bequests, and appropriations from the State of Georgia or any agency, instrumentality, or political subdivision thereof; or from any individual or corporation; or from the United States of America or any agency or instrumentality thereof.

(c) Subject to appropriations by the General Assembly, the commission will provide for the public broadcasting and other transmission of

educational, instructional, and continuing educational programs and telecourses to the various schools and citizens of the State of Georgia.

(d) Upon the submission of its budget request in accordance with the budget submission provisions of Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act," the commission may receive each year a grant appropriated to the board of regents for commission personnel and operating expenses. The commission shall submit a budget request consistent with the process used by other state agencies and commissions. This shall be submitted as a separate budget request through the board of regents as provided for in Code Section 50-4-3.

(e) The members of the commission shall be accountable in all respects as trustees. The commission shall keep suitable and proper books and records of all receipts, income, and expenditures of every kind and shall submit annually to the state auditor or his designated agent for inspection all of the books together with the proper statement of the commission's financial position at the close of its fiscal year.

(f) The Department of Law shall provide legal services to the commission in the same manner as legal services are provided to state departments under Article 2 of Chapter 15 of Title 45; and the provisions of Code Sections 45-15-13 through 45-15-16, relating to provision of legal services to state authorities, shall not apply with respect to provision of legal services to the commission. (Code 1981, § 20-13-5, enacted by Ga. L. 1990, p. 594, § 1.)

#### JUDICIAL DECISIONS

**Excluding minority candidate from political debate not unconstitutional.**

— Commission's decision to air a debate between Democratic and Republican candidates for Governor, while excluding a Libertarian candidate, was not viewpoint restrictive and did not lack a rational

basis, and therefore did not violate the First Amendment or the equal protection clause of the Fourteenth Amendment. *Chandler v. Georgia Pub. Telecommunications Comm'n*, 917 F.2d 486 (11th Cir. 1990), cert. denied, 502 U.S. 816, 112 S. Ct. 71, 116 L. Ed. 2d 45 (1991).

#### **20-13-6. Executive director; appointment.**

The Georgia Public Telecommunications Commission shall appoint an executive director of the commission and shall fix his compensation, duties, and responsibilities consistent with the provisions of this chapter. The executive director of the commission shall exercise the overall supervision and direction of the staff of the commission and shall serve at the pleasure of the commission. The commission may assign and delegate to the executive director such responsibilities, powers, and duties as it may deem proper and appropriate, including the authority to execute on behalf of the commission those documents and other filings required by the Federal Communications Commission



and other regulatory agencies. (Code 1981, § 20-13-6, enacted by Ga. L. 1990, p. 594, § 1.)

**20-13-7. Executive director; functions; powers; duties.**

The executive director shall be responsible for implementing the policies of the commission and for the day-to-day operations of the commission. The executive director shall develop job descriptions for the necessary administrative, production, liaison, and clerical personnel and shall, at his discretion, hire staff necessary for the commission operations. The executive director, with approval of the commission and with advice from the agencies which use its services, shall seek ways to improve these services. To the extent delegated by the commission, the executive director shall represent the commission nationally and shall transmit and interpret the state's position on public telecommunications matters to national, regional, and state bodies as necessary and as directed by the commission. The executive director shall recommend to the commission such advisory councils and memberships as shall be deemed appropriate by the executive director. (Code 1981, § 20-13-7, enacted by Ga. L. 1990, p. 594, § 1.)

**20-13-8. Licensure.**

(a)(1) The commission is authorized and empowered to hold licenses issued by the Federal Communications Commission or other appropriate governmental agencies necessary for the operation of public telecommunications facilities and to operate such facilities in the State of Georgia for the purpose of serving the educational and public telecommunications needs of the State of Georgia and the various communities within the state. For the purposes of this chapter, public telecommunications facilities shall include noncommercial educational radio and television stations, auxiliary broadcast facilities, low power television or radio stations, satellite earth stations, microwave stations, cable television systems, instructional television fixed service facilities, and such other telecommunications equipment and facilities as may be necessary for the provision of public telecommunications services to as much of the State of Georgia as feasible and for the realization of the other purposes of this chapter.

(2) For the purposes of this chapter, public telecommunications services shall include noncommercial educational and cultural radio and television programs and related instructional or informational material that may be transmitted by means of electronic communications.

(b) The prior Georgia Public Telecommunications Commission in existence as of January 1, 1990, is directed to do all acts necessary to

make application, as promptly as possible, to the Federal Communications Commission for the necessary authority to transfer or assign to the commission created by this chapter any and all Federal Communications Commission licenses or other authorizations which it holds or for which applications are pending before the Federal Communications Commission.

(c) The prior Georgia Public Telecommunications Commission is also directed to take actions mandated by the Federal Communications Commission or prudent to preserve and provide for the orderly transfer of the licenses. On the first Monday following the expiration of 40 days after the last grant of Federal Communications Commission authority for the assignment to the commission created by this chapter of any Federal Communications Commission license or other authorization, the prior Georgia Public Telecommunications Commission in existence on January 1, 1990, is authorized and directed to transfer or assign to the commission created by this chapter all rights, title, and interest to all such facilities and equipment, unless the commission created by this chapter shall direct that a later date for said transfer shall be utilized, in which event the date specified by the commission created by this chapter shall control said transfer. Until the transfer to the commission created by this chapter of the Federal Communications Commission license or other authorization, the noncommercial educational broadcast stations licensed to the prior Georgia Public Telecommunications Commission in existence on January 1, 1990, shall remain under the control of such prior commission.

(d) The commission created by this chapter shall integrate the facilities and equipment provided for in subsection (c) of this Code section and shall perform the following functions:

(1) Ensure the production and delivery of educational materials as needed by the state's educational entities, which shall include:

(A) Making instructional television available state wide to the various institutions of secondary, postsecondary, and higher education as well as the general public;

(B) Assisting in design of public telecommunications systems in public schools and training of public school employees to operate such systems effectively;

(C) Working with the Department of Education, the State Board of the Technical College System of Georgia, and the board of regents in planning and providing the most flexible instructional television delivery system possible, to include design, building, and operating of various open-air and closed circuit electronic delivery systems to serve elementary, secondary, postsecondary, vocational, college, postgraduate, and adult continuing educational needs; and

(D) Providing public telecommunications services state wide and meeting the public telecommunications needs of the public in the state;

(2) Initiate negotiations when deemed appropriate and acquire any other public broadcasting facilities that would enhance and improve the commission's public broadcasting network;

(3) Develop and implement a plan to establish adequate levels of local programming;

(4) Serve the public telecommunications television and radio production needs of all public agencies in the state which request such assistance on an at-cost purchase-of-services basis;

(5) Provide and acquire television and radio programming as needed;

(6) Purchase and provide services as necessary from and to public and private entities so as to perform effectively and efficiently its responsibilities and increase its fund base;

(7) Solicit and receive funds from the general public, corporate underwriters, and various public and private foundations;

(8) Enter into contracts individually or jointly with other entities for the production of quality educational and public programming;

(9) Make maximum efficient use of production and transmission equipment; plan equipment replacements in an orderly fashion; and monitor ongoing technological advances so that they can be adopted when they become cost feasible;

(10) Be empowered and encouraged to provide and maintain a state-wide public radio network and radio reading service for the visually disabled;

(11) Comply with all applicable regulations, such as ascertainment of viewer and listener needs and provisions for local participation;

(12) Offer technical assistance upon request to local governments in their negotiation of franchise agreements with cable television companies;

(13) Establish and maintain a positive working relationship with other organizations involved in public and private telecommunications in Georgia;

(14) Represent the state with other public telecommunications and regulatory agencies in Georgia, in other states, and at the national level;



(15) Represent the state as the coordinating entity for the National Telecommunications and Information Agency's public telecommunications facilities program;

(16) Establish and appoint advisory committees as necessary; and

(17) Adopt such rules and regulations as are necessary to carry out the purposes of this chapter. (Code 1981, § 20-13-8, enacted by Ga. L. 1990, p. 594, § 1; Ga. L. 1991, p. 94, § 20; Ga. L. 1992, p. 6, § 20; Ga. L. 1995, p. 1302, § 14; Ga. L. 2011, p. 632, § 3/HB 49.)

**The 2011 amendment**, effective July 1, 2011, substituted "State Board of the Technical College System of Georgia" for

"Board of Technical and Adult Education" in subparagraph (d)(1)(C).

### **20-13-9. Content of instructional television.**

It is the intent of this chapter that the content of instructional television is clearly and unequivocally the responsibility of the Board of Education, the State Board of the Technical College System of Georgia, and the board of regents for programs and courses within their respective purviews. In consultation with the appropriate agencies, the commission shall make available various public telecommunications services to help enable these agencies to carry out their defined responsibilities and purposes. (Code 1981, § 20-13-9, enacted by Ga. L. 1990, p. 594, § 1; Ga. L. 2011, p. 632, § 3/HB 49.)

**The 2011 amendment**, effective July 1, 2011, substituted "State Board of the Technical College System of Georgia" for

"Board of Technical and Adult Education" in the middle of the first sentence of this Code section.

### **20-13-10. Personnel; status as state employees; benefits.**

(a) The executive director and his deputy director, division directors, and other employees shall be considered state employees in the unclassified service of the merit system for the purposes of benefits administered by the merit system and for retirement purposes.

(b) Upon the assignment of the licenses held by the prior Georgia Public Telecommunications Commission to the commission created by this chapter, pursuant to the provisions of Code Section 20-13-8, all current positions and all officers and employees previously employed, assigned, or delegated by the Department of Education and the board of regents to the prior Georgia Public Telecommunications Commission shall be transferred to the commission created by this chapter. Certain employees from the Foundation for Public Broadcasting in Georgia who have functioned in support positions in the foundation for the benefit of the state and the prior Georgia Public Telecommunications Commission

shall be employed by the commission created by this chapter subject to the operating needs of the commission.

(c) All employees of the Department of Education transferred to the commission by the provisions of subsection (b) of this Code section shall retain all accumulated sick and annual leave and shall be entitled to retain membership in the Employees' Retirement System of Georgia and to retain any and all rights under said retirement plan.

(d) All employees of the board of regents transferred to the commission by the provisions of subsection (b) of this Code section shall retain all accumulated sick and annual leave and shall be entitled to retain membership in the Teachers Retirement System of Georgia and to retain any and all rights under said retirement plan.

(e) All employees or officers hired or appointed by the Georgia Public Telecommunications Commission on or after July 1, 1990, shall be members of the Employees' Retirement System of Georgia as a condition of employment. All employees and officers of the Georgia Public Telecommunications Commission who are not already members of the Employees' Retirement System of Georgia may elect to become members on or after July 1, 1990. Any officer or employee of the commission who is already a member of the Employees' Retirement System of Georgia by virtue of services with another employer shall be entitled to credit for his services and shall not suffer any loss of credit to which he is otherwise entitled. There shall be paid from the funds appropriated or otherwise available for the operation of the Georgia Public Telecommunications Commission all employer contributions required under this subsection, including employer's social security contributions. The commencement date shall be July 1, 1990. (Code 1981, § 20-13-10, enacted by Ga. L. 1990, p. 594, § 1.)

**OPINIONS OF THE ATTORNEY GENERAL**

|   |   |
|---|---|
| <p><b>Transfer of unused leave.</b> — Employee of the Georgia Public Telecommunications Commission who transfers to a classified position in another state agency</p> | <p>is entitled to transfer earned and unused sick and annual leave upon compliance with the rules of the State Personnel Board. 1991 Op. Att'y Gen. 91-7.</p> |
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**20-13-11. Powers.**

The commission shall have the power:

- (1) To have a seal and alter it at pleasure;
- (2) Subject to the approval of the State Properties Commission, to acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real property of every kind and character for its corporate purposes;

(3) Subject to the provisions of Part 1 of Article 3 of Chapter 5 of Title 50, relating to centralized purchasing, to acquire by purchase, lease, or otherwise and to hold, lease, and dispose of personal property of every kind and character for its corporate purposes;

(4) To appoint and select officers, agents, and employees, including architects, engineers, and construction experts, and to fix their compensation;

(5) Subject to the approval of the Georgia State Financing and Investment Commission:

(A) To accept loans of money, materials, or property of any kind from the United States of America or any agency or instrumentality thereof upon such terms and conditions as the United States of America or such agency or instrumentality may impose;

(B) To borrow money for temporary financing of a commission production and to provide for the payment of the same, as may be permitted under the Constitution and laws of the State of Georgia;

(6) To accept grants of money, materials, or property of any kind from the United States of America or any agency or instrumentality thereof upon such terms and conditions as the United States of America or such agency or instrumentality may impose;

(7) To exercise any power which is usually possessed by private corporations performing similar functions and which is not in conflict with the Constitution and laws of this state;

(8) To act as agent for the United States of America, or any agency, department, corporation, or instrumentality thereof, in any manner within the purposes or powers of the commission;

(9) To adopt, alter, or repeal its own bylaws, rules, and regulations governing the manner in which its business may be transacted and in which the power granted to it may be employed, as the commission may deem necessary or expedient in facilitating its business;

(10) To receive gifts, donations, contributions, or endowments from any person, firm, or corporation;

(11) To hold, use, administer, and expend such sum or sums as may hereafter be received as income from gifts, donations, contributions, or endowments for any of the purposes of the commission;

(12) To do any other things necessary or proper to provide for, promote, improve, and render public broadcasting projects self-supporting, including the establishment and modification of all reasonable fees, rentals, and other charges of whatever kind, consistent with paragraph (4) of subsection (d) of Code Section 20-13-8, it



deems necessary for any services or facilities provided to other agencies, instrumentalities, individuals, and corporations, both public and private;

(13) To make contracts and to execute all instruments necessary or convenient, including contracts for construction of projects or contracts with respect to the leasing or use of projects which the commission causes to be constructed, erected, or acquired; and

(14) To do all things necessary or convenient to carry out the powers expressly given, authorized, or required in this chapter. (Code 1981, § 20-13-11, enacted by Ga. L. 1990, p. 594, § 1.)

**20-13-12. Purpose; exemptions.**

It is found, determined, and declared that the creation of the commission and the carrying out of its corporate purposes are in all respects for the benefit of the people of this state and constitute a public purpose and that the commission will be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter. This state warrants and covenants that the commission shall be required to pay no taxes or assessments upon any property owned, acquired, or leased by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation or maintenance of the buildings, towers, and facilities erected or acquired by it or upon any fees, rentals, or other charges for the use of such buildings, towers, or facilities or upon other income received by the commission. This exemption shall include an exemption from state and local sales and use tax on property purchased by the commission for use exclusively by the commission. (Code 1981, § 20-13-12, enacted by Ga. L. 1990, p. 594, § 1.)

CHAPTER 14

EDUCATION COORDINATING COUNCIL

Article 1

General Provisions

- Sec.
- 20-14-1. Responsibility of council.
- 20-14-2. Creation of council.
- 20-14-3. Membership; officers; meetings.
- 20-14-4. Quorum; committees.
- 20-14-5. Annual reports.
- 20-14-6. Selection of personnel to support council.
- 20-14-7. Powers of council.
- 20-14-8. General powers and duties.
- 20-14-9. Access to records or data.
- 20-14-10. Decisions or actions by council directing action by department, board, or office.
- 20-14-11. Appointment by Governor of study commissions; findings and recommendations; staff and expenses.

Article 2

Education Accountability Assessment Programs

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- 20-14-20. Definitions.

PART 2

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ACCOUNTABILITY ASSESSMENT

- 20-14-30. Creation of performance based

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- accountability assessment program.
- 20-14-31. Establishing standard for satisfactory performance.
- 20-14-32. Obtaining nationally comparative results and benchmarks.
- 20-14-33. Indicators of quality of learning in individual schools and school systems; comparison to state standards; rating schools and school systems; providing information; uniform definition of "dropout" and "below grade level".
- 20-14-34. School and system report cards; required information; dissemination of reports.
- 20-14-35. Office powers; on-site audits; reporting findings and recommendations; authorization of other school audits.
- 20-14-36. Written procedures; training.
- 20-14-37. Creation of school awards system recognizing progress and achievements in schools.
- 20-14-38. Financial awards; proclamations by Governor.
- 20-14-39. Funding of award system.
- 20-14-40. Confidentiality of identifiable individual student performance data.
- 20-14-41. Appropriate levels of intervention for failing schools; master or management team; school improvement team; annual reports; data revision; hearing.

PART 4

POSTSECONDARY ACCOUNTABILITY ASSESSMENT PROGRAM

- 20-14-50. Creation; adoption of performance measures; report cards; audit.

PART 5

PRE-KINDERGARTEN ACCOUNTABILITY ASSESSMENT PROGRAM

- 20-14-60. Performance based account-

Sec.

ability assessment program;  
annual accountability report  
card; audits.

## PART 6

EDUCATION WORK FORCE ACCOUNTABILITY  
ASSESSMENT PROGRAM

20-14-70. Creation; adoption of perfor-  
mance measures; report cards;  
audit.

## PART 7

## EDUCATION INFORMATION STEERING COMMITTEE

20-14-80. Creation; member from Office  
of Student Achievement.

## PART 8

AGRICULTURAL EDUCATION ADVISORY  
COMMISSION

20-14-90. (Repealed effective December

Sec.

31, 2016) Agricultural Educa-  
tion Advisory Commission cre-  
ated; membership; powers and  
duties; repeal of provisions.

## PART 9

CAREER AND TECHNICAL EDUCATION ADVISORY  
COMMISSION

20-14-91. (Repealed effective December  
31, 2012) Career and Technical  
Education Advisory Commis-  
sion created; membership; re-  
porting and review require-  
ments; meetings;  
reimbursement of members;  
repeal of provisions.

**Code Commission notes.** — Pursuant  
to Code Section 28-9-5, in 2000, Chapter  
14 of this title, consisting of Code Sections  
20-14-1 through 20-14-15, enacted by Ga.  
L. 2000, p. 399, § 1, was redesignated as  
Chapter 15 of this title, consisting of Code  
Sections 20-15-1 through 20-15-15.

**Editor's notes.** — Ga. L. 2000, p. 618,  
§ 1, not codified by the General Assembly,  
provides: "This Act shall be known and  
may be cited as the 'A Plus Education  
Reform Act of 2000.'"

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 68 Am. Jur. 2d, Schools,  
§§ 1 et seq., 254.

**C.J.S.** — 78 C.J.S., Schools and School  
Districts, § 1 et seq.

## ARTICLE 1

## GENERAL PROVISIONS

**20-14-1. Responsibility of council.**

The General Assembly finds in regard to the creation of an Education Coordinating Council that said council should:

(1) Provide a forum for interagency communication regarding educational policy and programs;

(2) Provide for the effective and efficient coordination and seamlessness of public education programs and components within the education system of Georgia;



(3) Prevent unnecessary duplication of services within the education system of Georgia; and

(4) Oversee and review all education accountability programs from pre-kindergarten through postsecondary education in Georgia. (Code 1981, § 20-14-1, enacted by Ga. L. 2000, p. 618, § 93.)

#### **20-14-2. Creation of council.**

There is created an education council to be known as the “Education Coordinating Council” or “council” and as used in this chapter, the term “council” shall mean the Education Coordinating Council. (Code 1981, § 20-14-2, enacted by Ga. L. 2000, p. 618, § 93.)

#### **20-14-3. Membership; officers; meetings.**

(a) The council shall consist of the Governor, the State School Superintendent, the chairperson of the State Board of Education, the chancellor of the University System of Georgia, the chairperson of the Board of Regents of the University System of Georgia, the commissioner of the Technical College System of Georgia, the chairperson of the State Board of the Technical College System of Georgia, the executive secretary of the Professional Standards Commission, the chairperson of the Professional Standards Commission, and the director of the Department of Early Care and Learning.

(b) The Governor shall be the chairperson of the council. A vice chairperson and a secretary shall be selected by the members of the council as prescribed in the council’s bylaws.

(c) Meetings of the council shall be held quarterly, or more frequently, on the call of the chairperson. Meetings of the council shall be held with no less than five days’ public notice for regular meetings and with such notice as the bylaws may prescribe for special meetings. Each member shall be given written notice of all meetings. All meetings of the council shall be subject to the provisions of Chapter 14 of Title 50. Minutes or transcripts shall be kept of all meetings of the council and shall include a record of the votes of each member, specifying the yea or nay vote or absence of each member, on all questions and matters coming before the council. No member may abstain from a vote other than for reasons constituting disqualification to the satisfaction of a majority of a quorum of the council on a recorded vote. No member of the council shall be represented by a delegate or agent. (Code 1981, § 20-14-3, enacted by Ga. L. 2000, p. 618, § 93; Ga. L. 2001, p. 4, § 20; Ga. L. 2004, p. 645, § 16; Ga. L. 2005, p. 60, § 20/HB 95; Ga. L. 2011, p. 632, § 3/HB 49; Ga. L. 2012, p. 775, § 20/HB 942.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “State Board of Technical and Adult Education” in the middle of subsection (a).

**The 2012 amendment**, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, in subsection (a), substituted “chairperson of the State Board of Education” for “chairperson of

the State Board of the Technical College System of Georgia” near the beginning, substituted “commissioner of the Technical College System of Georgia” for “commissioner of technical and adult education”, and substituted “State Board of the Technical College System of Georgia” for “State Board of Technical and Adult Education” near the middle.

#### **20-14-4. Quorum; committees.**

(a) Except as otherwise provided in this part, a majority of the members of the council then in office shall constitute a quorum for the transaction of business. No vacancy on the council shall impair the right of the quorum to exercise the powers and perform the duties of the council. The vote of a majority of the members of the council present at the time of the vote, if a quorum is present at such time, shall be the act of the council unless the vote of a greater number is required by law or by the bylaws of the council.

(b) The chairperson may designate from among the members of the council one or more committees, each consisting of two or more members of the council, which shall have and exercise such authority as the council may delegate to it under such procedures as the council may provide by resolution establishing such committee or committees. (Code 1981, § 20-14-4, enacted by Ga. L. 2000, p. 618, § 93.)

#### **20-14-5. Annual reports.**

The council shall issue an annual report. Copies shall be distributed to each member of the General Assembly not later than the first Monday in December of every year, commencing December 2001. The report shall include:

(1) A summary of the council’s activities, findings, recommendations, and decisions over the past year; and

(2) Such other matters as the council shall determine to include. (Code 1981, § 20-14-5, enacted by Ga. L. 2000, p. 618, § 93.)

#### **20-14-6. Selection of personnel to support council.**

All departments, boards, and offices represented on the council, the Office of Planning and Budget, and the Office of Student Achievement shall select and appoint such personnel as each such department, board, or office shall determine to be necessary to support the council in the performance of its duties, with the approval of the council. Such

personnel shall serve at the direction of the council. Payment for all costs and salaries of such personnel shall come from funds appropriated to the respective departments, boards, and offices. (Code 1981, § 20-14-6, enacted by Ga. L. 2000, p. 618, § 93; Ga. L. 2004, p. 107, § 22.)

#### **20-14-7. Powers of council.**

The council shall have the following powers:

- (1) To have a seal and alter the same at its pleasure;
- (2) To adopt bylaws for its internal government and procedures;
- (3) To make and execute contracts, lease agreements, and all other instruments necessary or convenient to exercise the powers of the council or to further the public purpose for which the council is created;
- (4) To apply for and to accept any gifts or grants or loan guarantees or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof or from the state or any agency or instrumentality thereof or from any other source for any or all of the purposes specified in this article and to comply, subject to the provisions of this article, with the terms and conditions thereof;
- (5) To fix and collect fees and charges for data, information, and incidental services furnished by it to any private individual or entity;
- (6) To deposit or invest funds held by it in any state depository or in any investment which is authorized for the investment of proceeds of state general obligation bonds; and to use for its corporate purposes or redeposit or reinvest interest earned on such funds; and
- (7) To promulgate rules and regulations for the purposes and pursuant to the powers enumerated in this article. (Code 1981, § 20-14-7, enacted by Ga. L. 2000, p. 618, § 93.)

#### **20-14-8. General powers and duties.**

The council shall have the following general powers and duties, in addition to any and all other powers enumerated in this article, any or all of which may be exercised by the council directly or by the Office of Student Achievement under the direction and supervision of the council:

- (1) To foster coordination and cooperation among the chief officers of the departments, boards, and offices represented on the council;



- (2) To develop a seamless and integrated public education system;
  - (3) To require the shared and efficient expenditures for and utilization of facilities, personnel, and other resources;
  - (4) To require the seamless coordination of curriculum among the departments, boards, and offices represented on the council;
  - (5) To require reasonable ease of transition for students among the educational institutions represented on the council;
  - (6) To establish and require high and necessary levels of student achievement at all levels of education;
  - (7) To exercise oversight of accountability systems that are within or among the departments, boards, and offices represented on the council and develop overlay accountability systems through the Office of Student Achievement;
  - (8) To exercise supervision and oversight over the Office of Student Achievement created in Part 2 of Article 2 of this chapter;
  - (9) To coordinate the activities of state, regional, and local cooperative public education agencies, offices, or councils, including, but not limited to, the state's regional educational service agencies or other such groups that may be created in addition or in their place;
  - (10) To ensure the availability and quality of the education work force through preparation, professional development, and nontraditional routes to employment;
  - (11) To oversee the development and implementation of a comprehensive system-wide education student information system that will support the implementation of an education accountability system and improve the seamless operation of public education;
  - (12) To simplify rules and regulations by all departments, boards, and offices represented on the council;
  - (13) To develop a state-wide mentoring program that enhances student achievement at all levels of public education;
  - (14) To establish and coordinate a school safety collaborative with representation from agencies and organizations designated by the council to improve the school climate and enhance school safety; and
  - (15) To mediate disputes among the Department of Education, the University System of Georgia, the Technical College System of Georgia, the Professional Standards Commission, the Department of Early Care and Learning, and the Office of Student Achievement in matters regarding accountability or education system seamlessness.
- (Code 1981, § 20-14-8, enacted by Ga. L. 2000, p. 618, § 93; Ga. L.

2004, p. 107, § 22; Ga. L. 2004, p. 645, § 16; Ga. L. 2008, p. 335, § 2/SB 435.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2000, “offices” was substituted for “office” in paragraph (12).

#### **20-14-9. Access to records or data.**

All state departments, agencies, boards, bureaus, commissions, and authorities are authorized and required to make available to the council access to records or data which are available in electronic format or, if electronic format is unavailable, in whatever format is available. The judicial and legislative branches are authorized to likewise provide such access to the council. (Code 1981, § 20-14-9, enacted by Ga. L. 2000, p. 618, § 93.)

#### **20-14-10. Decisions or actions by council directing action by department, board, or office.**

Any decision or action by the council directing action by any department, board, or office represented on the council shall be placed on the agenda of the next regularly scheduled meeting of the governing body of the affected department, board, or office for immediate action. The action taken by the affected department, board, or office shall be reported to the council at the next regularly scheduled meeting of the council. (Code 1981, § 20-14-10, enacted by Ga. L. 2000, p. 618, § 93.)

#### **20-14-11. Appointment by Governor of study commissions; findings and recommendations; staff and expenses.**

(a) The Governor, as chairperson of the council, may appoint such study commissions as he or she shall deem appropriate to the purposes of this chapter to study education questions, issue findings, and make recommendations to the council. Such study commissions shall be composed of such number of residents of Georgia, with recognized interest or expertise in the field of education, as the Governor deems advisable and shall include the appointment of members of the House of Representatives, in consultation with the Speaker of the House, and members of the Senate, in consultation with the President of the Senate. The findings and recommendations of such commissions shall also be reported to the Governor, all members of the General Assembly, and the public.

(b) Staff to such commissions shall be provided in the same manner as staff to the council is provided under this article. Expenses related to such personnel shall be attributed to their respective office or agency, and expenses for other commission members shall be paid through

funds appropriated to the office of the Governor or in the case of members of the General Assembly through funds appropriated to the House of Representatives and the Senate. (Code 1981, § 20-14-11, enacted by Ga. L. 2000, p. 618, § 93.)

ARTICLE 2

EDUCATION ACCOUNTABILITY ASSESSMENT PROGRAMS

**Administrative rules and regulations.** — Statewide accountability, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Chapter 160-7-1.

PART 1

GENERAL PROVISIONS

20-14-20. Definitions.

As used in this article, the term:

- (1) “Board of regents” means the Board of Regents of the University System of Georgia.
- (2) “Council” means the Education Coordinating Council created in Article 1 of this chapter.
- (3) “Director” means the director of the Office of Student Achievement.
- (4) “Early intervention program” means the program established under Code Section 20-2-153.
- (5) “Office” means the Office of Student Achievement. (Code 1981, § 20-14-20, enacted by Ga. L. 2000, p. 618, § 93; Ga. L. 2004, p. 107, § 22.)

PART 2

OFFICE OF STUDENT ACHIEVEMENT

20-14-25. Creation; director; authority; seal; administrative assignment.

- (a) There is created the Office of Student Achievement.
- (b) The chief administrative and executive officer of the office shall be the director, who shall be appointed by the Governor with the advice and consent of the Senate. Subject to the general policy established by the Education Coordinating Council, the director shall be responsible for the performance and exercise of the duties, responsibilities, func-



tions, powers, and authority imposed upon the director and the office as provided by law. The director shall receive a salary to be determined by the Governor.

(c) The director shall have the authority to employ all personnel of the office, subject to the provisions of this part and all applicable provisions of other laws governing public employment.

(d) The office may adopt a seal for its use and shall be authorized to enter into contracts to fulfill its duties under this article.

(e) The office shall be assigned for administrative purposes only, as that term is defined in Code Section 50-4-3, to the Office of Planning and Budget. (Code 1981, § 20-14-25, enacted by Ga. L. 2000, p. 618, § 93; Ga. L. 2004, p. 107, § 22.)

### **20-14-26. Duties.**

(a) The office shall have the following duties:

(1) To create a single state-wide accountability system, establish indicators of performance, rate schools and school systems, develop annual report cards for elementary, middle, and secondary schools, and formulate a system of school awards and interventions. The State Board of Education shall approve a single accountability system for local schools and school systems that incorporates federal law, rules, and regulations relating to accountability;

(2) To audit and inspect or cause to be audited or inspected for the purpose of verification, research, analysis, reporting, or for other purposes related to the performance of its powers and duties as provided in this article and for the purposes of auditing pre-kindergarten, elementary, middle grades, and secondary education, postsecondary education, and education work force programs and schools, local school systems, institutes, colleges, universities, regional educational service agencies, and other public education programs and entities as defined by the council;

(3) To serve as staff to the council; and

(4) To exercise the powers and discharge duties of the council, as set forth in Code Section 20-14-8, under the supervision and oversight of the council.

(b) The member agencies of the council and other departments, boards, and offices of this state shall cooperate fully with the office and shall provide the office with all information that the council deems necessary for the office to discharge its accountability duties under this article regarding the education programs and units governed by such member agencies or other departments, boards, or offices. (Code 1981,

§ 20-14-26, enacted by Ga. L. 2000, p. 618, § 93; Ga. L. 2004, p. 107, § 20; Ga. L. 2005, p. 798, § 18/SB 35.)

**20-14-27. Required reports; publication format.**

(a) The office shall submit the following reports to the council:

(1) An annual report regarding pre-kindergarten education shall be submitted no later than December 1 of each year, commencing December 1, 2002. The pre-kindergarten report shall be an evaluation of the progress made on performance indicators identified and defined by the office and approved by the council for all pre-kindergarten and child care programs under the administrative control of the Department of Early Care and Learning. The pre-kindergarten report shall include information concerning results of the state's investment in each pre-kindergarten program;

(2) An annual report regarding elementary and secondary education shall be submitted no later than December 1 of each year, commencing December 1, 2001. The elementary and secondary education report shall be an evaluation of the progress made on performance indicators identified and defined by the office and approved by the council for all elementary and secondary education programs administered by the Department of Education. The elementary and secondary education report shall include information concerning results of the state's investment in each public school and each public school system;

(3) An annual report regarding postsecondary education shall be submitted no later than December 1 of each year, commencing December 1, 2002. The postsecondary education report shall be an evaluation of the progress made on performance indicators identified and defined by the office and approved by the council for all universities, colleges, institutes, and schools in the University System of Georgia and under the governance of the Technical College System of Georgia. The postsecondary education report shall include information concerning results of the state's investment in each university, college, institute, and school; and

(4) An annual report regarding the Georgia education work force shall be submitted no later than December 1 of each year, commencing December 1, 2002. The Georgia education work force report shall be an evaluation of the progress made on performance indicators identified and defined by the office and approved by the council for the education work force status under the administrative control of the Professional Standards Commission. The Georgia education work force report shall contain information on the results of the state's investments in teacher preparation, educators' professional develop-

ment, education leadership development, in-field teaching, geographic teacher shortages, alternative routes to teacher certification, and other general information and indicators on the quality of the education work force.

(b) Each report provided for in this Code section shall be published in a format that can be easily understood by parents and other members of the community who are not professional educators. Such reports shall be distributed to the Governor, Lieutenant Governor, the Speaker of the House of Representatives, the chairpersons of the Higher Education committees of the Senate and House of Representatives, the House Education Committee, and the Senate Education and Youth Committee, members of the state education governing boards or commissions, and members of the council. The office shall not be required to distribute copies of such reports to the members of the General Assembly but shall notify such members of the availability of the reports in the manner which it deems to be most effective and efficient. In addition, such reports shall be posted on the website of the office. (Code 1981, § 20-14-27, enacted by Ga. L. 2000, p. 618, § 93; Ga. L. 2004, p. 645, § 16; Ga. L. 2005, p. 1036, § 19/SB 49; Ga. L. 2008, p. 335, § 2/SB 435; Ga. L. 2009, p. 303, § 10/HB 117.)

**Editor's notes.** — Ga. L. 2009, p. 303, § 20/HB 117, not codified by the General Assembly, provides that: "This Act is intended to reflect the current internal organization of the Georgia Senate and

House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

#### **20-14-28. Reporting on effect of nationally certified teachers on student performance.**

When the state-wide comprehensive educational information system provided for in Code Section 20-2-320 becomes functional, the office shall conduct a longitudinal study of the effect of nationally certified teachers on student performance in Georgia. Thereafter, the office shall prepare an annual report addressing the question of whether nationally certified and Teacher Alternative Preparation Program teachers have improved student performance in Georgia. The office shall submit such report to the State Board of Education and shall notify the members of the General Assembly of the availability of such report in the manner which it deems to be most effective and efficient. (Code 1981, § 20-14-28, enacted by Ga. L. 2002, p. 397, § 8; Ga. L. 2005, p. 1036, § 20/SB 49.)



**20-14-29. Limitation on liability of private postsecondary institutions for sharing confidential information.**

(a) When private colleges and universities in this state provide the Office of Student Achievement with confidential student data or records concerning students enrolled in such private colleges and universities, such private colleges and universities shall not be held liable in any court in this state for any breach of confidentiality, disclosure, use, retention, or destruction of such information if such breach, disclosure, use, retention, or destruction resulted from actions of the Office of Student Achievement or its staff and not from the transmission of the information by the private college or university before such information reached the Office of Student Achievement.

(b) This Code section shall apply to any student data or records that are confidential under any law of this state or any federal law, including, but not limited to, the federal Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232g. (Code 1981, § 20-14-29, enacted by Ga. L. 2012, p. 1131, § 1/SB 405.)

**Effective date.** — This Code section became effective May 2, 2012.

**PART 3****ACCOUNTABILITY ASSESSMENT****20-14-30. Creation of performance based accountability assessment program.**

The office shall create and implement a state-wide kindergarten through grade 12 accountability assessment program that is performance based to ensure school accountability for the goals of improved student achievement and improved school completion. (Code 1981, § 20-14-30, enacted by Ga. L. 2000, p. 618, § 93; Ga. L. 2004, p. 107, § 21.)

**20-14-31. Establishing standard for satisfactory performance.**

Except as otherwise provided in this article, the office shall establish the levels of performance on each assessment instrument administered under Code Section 20-2-281 by establishing the standard that should be achieved by students in each subject area at each grade level. Data and information regarding the establishment of the standard shall be included in the annual report provided for in paragraph (2) of subsection (a) of Code Section 20-14-27. (Code 1981, § 20-14-31, enacted by Ga. L. 2000, p. 618, § 93; Ga. L. 2004, p. 107, § 21.)

**20-14-32. Obtaining nationally comparative results and benchmarks.**

The office's state education accountability analysis and reporting program shall obtain nationally comparative results and benchmarks for the subject areas and grade levels for which criterion-referenced and nationally normed reference assessment instruments are adopted, compare Georgia results to such results, and include the findings in the report required of the office in paragraph (2) of subsection (a) of Code Section 20-14-27. (Code 1981, § 20-14-32, enacted by Ga. L. 2000, p. 618, § 93; Ga. L. 2004, p. 107, § 21.)

**20-14-33. Indicators of quality of learning in individual schools and school systems; comparison to state standards; rating schools and school systems; providing information; uniform definition of "dropout" and "below grade level".**

(a) The office, in coordination with the Department of Education, shall adopt and annually review, and revise as necessary, indicators of the quality of learning by students, financial efficiency, and school climate for individual schools and for school systems.

(b) The performance indicators of quality of learning shall be based on data that include student achievement, achievement gap closure, and student progress. The performance indicators of quality of learning shall include all students regardless of ethnicity, sex, disability, language proficiency, and socioeconomic status and shall be disaggregated by all subgroups as required under the federal Elementary and Secondary Education Act, as amended.

(c) Performance on the indicators of quality of learning, financial efficiency, school climate, and any other indicators the office adopts shall be compared to state standards, progress on improved student achievement, and comparable performance. The standards for comparison shall be established by the office as provided in Code Section 20-14-31, in coordination with the Department of Education. Data and information regarding the standards shall be included in the annual report provided for in paragraph (2) of subsection (a) of Code Section 20-14-27. Financial efficiency may include an analysis of how federal and state funds spent by local school systems impact student achievement and school improvement, and components used to determine financial efficiency may include actual achievement, resource efficiency, and student participation in standardized testing. School climate determinations may utilize data from student health surveys, data on environmental and behavior indicators, data on student behavioral and school-based reactions, and teacher and parent survey instruments.

Financial efficiency and school climate shall have one of the following star ratings based upon the factors included in this subsection, as further defined by rules and regulations of the office:

(1) “5-star” schools ranked excellent according to the state determined financial efficiency or school climate index, as appropriate;

(2) “4-star” schools ranked above average according to the state determined financial efficiency or school climate index, as appropriate;

(3) “3-star” schools ranked average according to the state determined financial efficiency or school climate index, as appropriate;

(4) “2-star” schools ranked below satisfactory according to the state determined financial efficiency or school climate index, as appropriate; or

(5) “1-star” schools ranked unsatisfactory according to the state determined financial efficiency or school climate index, as appropriate.

(d) The office, in coordination with the Department of Education, shall establish and annually calculate individual school and school system ratings, which shall be a numerical score on a scale of 0-100, for each public school and school system in this state based on the indicators of quality of learning adopted pursuant to this Code section for student achievement, achievement gap closure, and student progress with a majority of the score based on student achievement.

(e) Each school system shall provide all student performance data and all other data necessary for the calculation of the school and school system rating to the Department of Education’s educational information system in accordance with rules and timelines established by the State Board of Education and the Department of Education shall make such data available to the office to enable it to conduct its required duties.

(f) The office shall develop and the State Board of Education shall adopt a uniform definition of “dropout.” All schools and school systems shall report student dropout information to the Department of Education’s educational information system in accordance with rules and timelines established by the state board as provided in subsection (b) of Code Section 20-2-167. Each school system shall cooperate with the office in determining whether a student is a dropout under this subsection and shall adopt the uniform definition of “dropout.” Data and information regarding the establishment of the definition and the tracking of dropout and school completion data shall be included in the annual report provided for in paragraph (2) of subsection (a) of Code Section 20-14-27. School completion data shall be included in the



performance indicators of quality of learning for each school and school system.

(g) The office shall develop and the State Board of Education shall adopt a uniform definition of a “below grade level” student for purposes of placing students in the early intervention program under Code Section 20-2-153 and for purposes of tracking these students for accountability purposes. Data and information regarding the establishment of the definition shall be included in the annual report provided for in paragraph (2) of subsection (a) of Code Section 20-14-27. (Code 1981, § 20-14-33, enacted by Ga. L. 2000, p. 618, § 93; Ga. L. 2004, p. 107, § 21; Ga. L. 2005, p. 798, § 19/SB 35; Ga. L. 2012, p. 341, § 1/SB 410.)

**The 2012 amendment**, effective July 1, 2012, rewrote this Code section.

#### **20-14-34. School and system report cards; required information; dissemination of reports.**

(a) Each school year, the office shall prepare and distribute to each school system in the State of Georgia a report card for each school in the school system and for the school system. The report cards shall include performance data on quality of learning, financial efficiency, and school climate as calculated pursuant to Code Section 20-14-33 and based on the most current data available disaggregated by student groups. This report card on schools shall be the official state education performance report and supersedes all other reports that may be issued by departments of the state government for matters of funding, awards, and interventions.

(b) The report cards shall include the following information, where applicable:

- (1) The individual school and school system ratings in a numerical format as provided for in subsection (d) of Code Section 20-14-33;
- (2) A financial efficiency rating for each school and school system;
- (3) A school climate rating for each school and school system;
- (4) An explanation of the criteria that informs the school and school system rating; and
- (5) An explanation of the criteria that informs the financial efficiency and school climate ratings.

(c) Each school year, the office shall prepare and distribute a state-wide report card, aggregated by school systems and disaggregated by student groups, reporting on the performance results of each school

and each school system in the state and a rating for each school and each school system as provided for in subsection (d) of Code Section 20-14-33 and subsection (a) of this Code section.

(d) The State Board of Education shall adopt rules requiring dissemination of appropriate portions of school and school system report cards annually to the parent, guardian, conservator, or other person having lawful control of each student at the school. On written request, the local school system shall provide a copy of a school or school system report card to any other party. These report cards shall be posted on the Office of Student Achievement website, the Department of Education website, and the existing website of such local school system. (Code 1981, § 20-14-34, enacted by Ga. L. 2000, p. 618, § 93; Ga. L. 2004, p. 107, § 21; Ga. L. 2005, p. 798, § 20/SB 35; Ga. L. 2012, p. 341, § 2/SB 410.)

**The 2012 amendment**, effective July 1, 2012, rewrote this Code section.

**20-14-35. Office powers; on-site audits; reporting findings and recommendations; authorization of other school audits.**

(a) The office may:

(1) Conduct on-site audits of any school at any time, subject to the approval of the director;

(2) Raise or lower any performance rating as a result of the audit; and

(3) Review school fund accounting information and records to determine effective and efficient expenditure of state funds as allocated.

(b) The director shall determine the frequency of on-site audits by the office according to annual comprehensive analyses of student performance and equity in relation to the academic excellence indicators and fund accounting assessments as adopted under subsection (b) of Code Section 20-14-34.

(c) In making an on-site school performance audit, the auditor shall obtain information from administrators, teachers, and parents of students enrolled in the local school system. The audit may not be closed until information is obtained from each of those sources. The office shall adopt rules regarding obtaining information from parents and using that information in the auditor's report and obtaining information from teachers in a manner that prevents a school or school system from screening the information.

(d) The auditors shall report to the local board of education, the local school council, and appropriate school administrators and shall report findings and recommendations concerning any necessary improvements or intervention strategies. School audit reports shall be provided to the council and the State Board of Education.

(e) The director may authorize other school audits to be conducted under the following circumstances:

(1) When excessive numbers of absences of students eligible to be tested on state assessment instruments are determined; or

(2) When a school or school system has not provided student performance information to the Department of Education's educational information system as required under subsection (b) of Code Section 20-2-167. (Code 1981, § 20-14-35, enacted by Ga. L. 2000, p. 618, § 93; Ga. L. 2004, p. 107, § 21.)

#### **20-14-36. Written procedures; training.**

The office shall recommend, and the State Board of Education shall adopt, written procedures for conducting on-site audits under this part. The office shall make the procedures available to the schools, school councils, local boards of education, and the public. Office staff shall be trained in audit procedures and shall follow such procedures in conducting the audit. (Code 1981, § 20-14-36, enacted by Ga. L. 2000, p. 618, § 93; Ga. L. 2004, p. 107, § 21.)

#### **20-14-37. Creation of school awards system recognizing progress and achievements in schools.**

The Office of Student Achievement shall develop and the State Board of Education shall approve a Georgia schools awards system to recognize those schools and school systems that demonstrate progress or success in achieving the education goals of the state and achieving excellence on the school rating system as provided for in Code Section 20-14-33. (Code 1981, § 20-14-37, enacted by Ga. L. 2000, p. 618, § 93; Ga. L. 2004, p. 107, § 21.)

#### **20-14-38. Financial awards; proclamations by Governor.**

(a) Financial awards may be provided to the schools that the director determines have demonstrated the greatest improvement in achievement gap closure, subject to appropriation by the General Assembly and any limitation set by the director on the total amount that may be awarded to a school or local school system.

(b) Financial awards may be provided to each school that is identified by the director for performance in student achievement or student



progress. The certificated personnel in a school that is identified by the director as either a best performing school or better performing school in either or both categories may be provided a bonus for the year the school was identified of \$1,000.00 for each best performing school designation and \$500.00 for each better performing school designation. The maximum individual annual bonus for certificated personnel shall not exceed \$2,000.00 and shall be provided subject to appropriation by the General Assembly or as otherwise may be provided. An additional financial award may be provided to each school for noncertificated personnel in the amount of \$10,000.00 for each designation of best performing school and \$5,000.00 for each designation of better performing school, provided that the total lump sum noncertificated personnel award for an individual school shall not exceed \$20,000.00; provided, further, that funds for this purpose are appropriated by the General Assembly or as otherwise may be provided. The school receiving this noncertificated personnel award shall determine the distribution of the award among such personnel of its school.

(c) The Governor may present proclamations or certificates to schools and school systems determined to have met or exceeded the state's education goals under Code Section 20-14-30. (Code 1981, § 20-14-38, enacted by Ga. L. 2000, p. 618, § 93; Ga. L. 2004, p. 107, § 21; Ga. L. 2012, p. 341, § 3/SB 410.)

**The 2012 amendment**, effective July 1, 2012, substituted "may" for "will" throughout this Code section; substituted "achievement gap closure" for "achieving the education goals of improved student achievement and improved school comple-

tion" near the middle of subsection (a); and substituted "in student achievement or student progress" for "on either or both excellence in student achievement and progress on student achievement" in the first sentence of subsection (b).

## **20-14-39. Funding of award system.**

The financial award system may be funded by donations, grants, or appropriation by the General Assembly or as otherwise provided. The State Board of Education may solicit and receive grants and donations for the purpose of making awards under this part. Award funds may be used by the State Board of Education to pay for the costs associated with sponsoring a ceremony to recognize or present awards to schools or school systems under this part. The donations, grants, or appropriations by the General Assembly shall be accounted for and distributed by the State Board of Education. The awards are subject to audit requirements established by the State Board of Education. (Code 1981, § 20-14-39, enacted by Ga. L. 2000, p. 618, § 93; Ga. L. 2004, p. 107, § 21.)

**20-14-40. Confidentiality of identifiable individual student performance data.**

All identifiable individual student performance data and information and reports received by the office, the Department of Education, and the State Board of Education under this part from schools or school systems shall be deemed confidential and may not be disclosed. (Code 1981, § 20-14-40, enacted by Ga. L. 2000, p. 618, § 93; Ga. L. 2004, p. 107, § 21.)

**20-14-41. Appropriate levels of intervention for failing schools; master or management team; school improvement team; annual reports; data revision; hearing.**

(a) The State Board of Education shall by policies, rules, or regulations establish a coherent and sustained system of assistance and support for schools not meeting identified levels of achievement or not showing specified levels of progress as determined by the office. The State Board of Education shall by policies, rules, or regulations specify appropriate levels of assistance and intervention for schools that receive an unacceptable rating on student achievement, achievement gap closure, or student progress, or any combination thereof. In specifying levels of assistance and intervention, the State Board of Education shall consider the number of years a school has received an unacceptable rating and may include one or more of the following interventions:

(1) Issuing public notice of the deficiency to the local board of education;

(2) Ordering a hearing to be conducted at the school by the local board of education with the participation of the school council for the purpose of notifying the public of the unacceptable performance, the improvements in performance expected by the office, and the interventions that may be imposed under this Code section if the performance does not improve within a designated period of time and of soliciting public comment on the initial steps being taken to improve performance;

(3) Ordering the preparation of an intensive student achievement improvement plan that addresses each academic excellence indicator for which the school's performance is unacceptable, the submission of the plan to the State Board of Education for approval, and implementation of the plan;

(4) Appointing a Department of Education school improvement team to:

(A) Conduct a comprehensive on-site evaluation of each low-performing school to determine the cause for the school's low

performance and lack of progress that includes presentations by the chairperson of the local board of education, the school principal, a parent member of the local school council, and other school personnel;

(B) Recommend actions, including reallocation of resources and technical assistance, changes in school procedures or operations, professional learning focused on student achievement for instructional and administrative staff, intervention for individual administrators or teachers, instructional strategies based on scientifically based research, waivers from state statutes or rules, adoption of policies and practices to ensure all groups of students meet the state's proficiency level, extended instruction time for low-performing students, strategies for parental involvement, incorporation of a teacher mentoring program, smaller class size for low-performing students, or other actions the team considers appropriate;

(C) Assist in the development of an intensive school improvement plan focused on student achievement required by paragraph (3) of this subsection; and

(D) Monitor the progress of the school in implementing the intensive school improvement plan focused on student achievement;

(5) If a school has received an unacceptable rating for a period of two consecutive years or more, appointing a school master or management team to oversee and direct the duties of the principal of the school in relation to the school until school performance improves and the school is released from intervention by the director, with the cost of the master or management team to be paid by the state; or

(6) If a school has received an unacceptable rating for a period of three consecutive years or more, the State Board of Education shall, subject to the provisions of subsection (f) of this Code section, implement one or more of the following interventions or sanctions:

(A) Removal of school personnel on recommendation of the master or the school improvement team, including the principal and personnel whose performance has continued not to produce student achievement gains over a three-year period as a condition for continued receipt of state funds for administration;

(B) Allow for the implementation of a state charter school through the designation by the State Board of Education;

(C) Mandate the complete reconstitution of the school, removing all personnel, appointing a new principal, and hiring all new staff. Existing staff may reapply for employment at the newly reconsti-



tuted school but shall not be rehired if their performance regarding student achievement has been negative for the past three years;

(D) Mandate that the parents have the option to relocate the student to other public schools in the local school system to be chosen by the parents of the student from a list of available options provided by the local school system. The local school system shall provide transportation for students in Title I schools in accordance with the requirements of federal law. The local school system may provide transportation for students in non-Title I schools. In any year in which the General Assembly does not appropriate funds for the provision of transportation to non-Title I students, the parent or guardian shall assume responsibility for the transportation of that student;

(E) Mandate a monitor, master, or management team in the school that shall be paid by the district;

(F) Continue the intensive student achievement improvement plan provided for in paragraph (3) of this subsection; or

(G) Mandate a complete restructuring of the school's governance arrangement and internal organization of the school.

(b) If a school has received an unacceptable rating for a period of two consecutive years or more, the following interventions shall be imposed, subject to the provisions of subsection (f) of this Code section, in accordance with rules and regulations established by the State Board of Education and in addition to any other interventions imposed by the State Board of Education pursuant to subsection (a) of this Code section:

- (1) Mandated public school choice;
- (2) Specified maximum class sizes; and
- (3) Site based expenditure controls.

At its discretion, the State Board of Education shall also be authorized to impose additional restrictions or mandates on schools subject to this subsection, as deemed appropriate by the State Board of Education and in accordance with its rules and regulations.

(c) The State Board of Education shall clearly define the powers and duties of a master or management team appointed to oversee the operations of a school.

(d) A school improvement team appointed under this Code section may consist of currently employed or retired teachers, principals, other educational professionals, Department of Education school improvement employees, or local school superintendents recognized for excel-

lence in their roles and appointed by the State Board of Education to serve as members of a team.

(e) The State Board of Education shall annually report by October 31 of each year the status of the interventions imposed on low-performing schools to the office with recommendations regarding ending, extending, or upgrading the interventions on those schools. The director shall review and respond to the report.

(f) Before the implementation of any interventions for a school that has received an unacceptable rating for two years or three years, the local board of education for such school shall have an opportunity to examine the data which form the basis for the intervention or interventions and to provide any correction, explanation, or supplement to such data. The department shall determine whether to accept or reject any revision in the data proposed by the local board. The department shall subsequently intervene or not in accordance with the department's determination of the data.

(g) A local board of education may request an opportunity for a hearing before the state board to show cause why an intervention or interventions should not be required. An intervention shall not be stayed pending the hearing or the determination of the state board. The determination of the state board shall be the final decision. (Code 1981, § 20-14-41, enacted by Ga. L. 2000, p. 618, § 93; Ga. L. 2004, p. 107, § 21; Ga. L. 2005, p. 798, § 21/SB 35; Ga. L. 2012, p. 341, § 4/SB 410.)

**The 2012 amendment**, effective July 1, 2012, substituted "student achievement, achievement gap closure, or student progress, or any combination thereof" for "student performance for the absolute student achievement standard or on progress

on improved student achievement" in the second sentence of subsection (a).

**Law reviews.** — For note and comment, "School Choice: Constitutionality and Possibility in Georgia," see 24 Ga. St. U. L. Rev. 587 (2007).

## PART 4

### POSTSECONDARY ACCOUNTABILITY ASSESSMENT PROGRAM

#### **20-14-50. Creation; adoption of performance measures; report cards; audit.**

(a) The office shall create and the council shall adopt the rules and policies that support a postsecondary accountability assessment program that is primarily performance based.

(b) The office shall develop and the council shall adopt performance measures and indicators that provide the basis for an accountability report card annually on the University System of Georgia and the Technical College System of Georgia.

(c) The office and the board of regents shall identify, define, and develop such performance indicators and measures by December 1, 2001. The first report card on universities and colleges shall be implemented and produced by the office by December 1, 2002.

(d) The office and the State Board of Technical and Adult Education (now known as the State Board of the Technical College System of Georgia) shall identify, define, and develop such performance indicators and measures by December 1, 2001. The office shall implement and produce the first report card on the department, institutes, and schools by December 1, 2002.

(e) After December 1, 2002, the office shall audit those postsecondary institutions, schools, colleges, or programs as necessary in implementing the education accountability system described in this part. (Code 1981, § 20-14-50, enacted by Ga. L. 2000, p. 618, § 93; Ga. L. 2008, p. 335, § 2/SB 435; Ga. L. 2011, p. 632, § 3/HB 49; Ga. L. 2012, p. 775, § 20/HB 942.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “State Board of Technical and Adult Education” in subsection (d).

**The 2012 amendment**, effective May 1, 2012, part of an Act to revise, modern-

ize, and correct the Code, substituted “the State Board of Technical and Adult Education (now known as the State Board of the Technical College System of Georgia)” for “the State Board of the Technical College System of Georgia” in subsection (d).

## PART 5

### PRE-KINDERGARTEN ACCOUNTABILITY ASSESSMENT PROGRAM

#### **20-14-60. Performance based accountability assessment program; annual accountability report card; audits.**

(a) The office, with the approval of the council, shall create and the Department of Early Care and Learning shall adopt the rules and policies that support a pre-kindergarten accountability assessment program that is primarily performance based.

(b) The office shall develop and the Department of Early Care and Learning shall adopt performance measures and indicators that provide the basis for an accountability report card annually on the Department of Early Care and Learning.

(c) The office and the Department of Early Care and Learning shall identify, define, and develop such performance indicators and measures by December 1, 2001. The office shall implement and produce the first report card on the Department of Early Care and Learning and pre-kindergarten programs by December 1, 2002.



(d) After December 1, 2002, the office shall audit those pre-kindergarten programs as necessary in implementing the education accountability system described in this part. (Code 1981, § 20-14-60, enacted by Ga. L. 2000, p. 618, § 93; Ga. L. 2004, p. 645, § 16.)

PART 6

EDUCATION WORK FORCE ACCOUNTABILITY ASSESSMENT PROGRAM

**20-14-70. Creation; adoption of performance measures; report cards; audit.**

(a) The office, with the approval of the council, shall create and the Professional Standards Commission shall adopt the rules and policies that support an education work force accountability assessment program that is primarily performance based.

(b) The office shall develop and recommend and the Professional Standards Commission shall adopt performance measures and indicators that provide the basis for an accountability report card annually on the Professional Standards Commission and the Georgia education work force.

(c) The office and the Professional Standards Commission shall identify, define, and develop such performance indicators and measures by December 1, 2001. The office shall implement and produce the first report card on the Professional Standards Commission and the Georgia education work force by December 1, 2002.

(d) After December 1, 2002, the office shall audit the education work force practicing in this state and all teacher preparation and professional development programs as necessary in implementing the education accountability system described in this part. (Code 1981, § 20-14-70, enacted by Ga. L. 2000, p. 618, § 93.)

PART 7

EDUCATION INFORMATION STEERING COMMITTEE

**20-14-80. Creation; member from Office of Student Achievement.**

(a) There shall be an Education Information Steering Committee as provided in Code Section 20-2-320.

(b) The office shall provide a member to the Education Information Steering Committee to assure that all necessary data, information, and specifications are included in the development of and changes to the

state-wide comprehensive educational information system for purposes of education accountability. (Code 1981, § 20-14-80, enacted by Ga. L. 2000, p. 618, § 93.)

## PART 8

### AGRICULTURAL EDUCATION ADVISORY COMMISSION

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2006, Part 8, as enacted by Ga. L. 2006, p. 1008, § 1/HB 1228, was redesignated as Part 9.

### **20-14-90. (Repealed effective December 31, 2016) Agricultural Education Advisory Commission created; membership; powers and duties; repeal of provisions.**

(a) There is created the Agricultural Education Advisory Commission.

(b)(1) The commission shall consist of three members of the House of Representatives to be appointed by the Speaker of the House, at least one of whom shall be from the House Committee on Agriculture and Consumer Affairs and at least one of whom shall be from the House Committee on Education; three members of the Senate to be appointed by the Senate Committee on Assignments, at least one of whom shall be from the Senate Agriculture and Consumer Affairs Committee and at least one of whom shall be from the Senate Education and Youth Committee; three members who are not members of the General Assembly to be appointed by the Governor; and three members who are not members of the General Assembly to be appointed by the State School Superintendent.

(2) Vacancies in the commission shall be filled in the same manner as the original appointments.

(3)(A) Legislative members of the commission shall serve two-year terms concurrent with their terms as members of the General Assembly.

(B) Nonlegislative members of the commission shall serve for two-year terms concurrent with those terms of legislative members of the commission.

(c) The Speaker of the House shall designate one of the commission members from the House of Representatives as a co-chairperson of the commission, and the Senate Committee on Assignments shall designate one of the commission members from the Senate as a co-chairperson of the commission. Each co-chairperson shall serve as such concurrent with his or her term as a member of the commission.

(d)(1) The head of the agricultural education program of the Department of Education shall report annually to the commission regarding the conditions, needs, issues, and problems of the program.

(2) The commission shall periodically review the conditions, needs, issues, and problems related to the agricultural education program, issue annually a report on the same to the General Assembly, and recommend any action or legislation which the commission deems necessary or appropriate.

(e)(1) The commission may conduct such meetings at such places and at such times as it may deem necessary or convenient to enable it to exercise fully and effectively its powers, perform its duties, and accomplish the objectives and purposes of this Code section. The commission shall meet upon the call of either co-chairperson. The commission shall meet at least once annually.

(2) The legislative members of the commission shall receive the allowances provided for in Code Section 28-1-8. Any citizen members shall receive a daily expense allowance in the amount specified in subsection (b) of Code Section 45-7-21 as well as the mileage or transportation allowance authorized for state employees. Any members of the commission who are state officials, other than legislative members, and state employees shall receive no compensation for their services on the commission, but they shall be reimbursed for expenses incurred by them in the performance of their duties as members of the commission in the same manner as they are reimbursed for expenses in their capacities as state officials or employees. The funds necessary for the reimbursement of the expenses of state officials, other than legislative members, and state employees shall come from funds appropriated to or otherwise available to the Department of Education. All other funds necessary to carry out the provisions of this Code section shall come from funds appropriated to the House of Representatives and the Senate. The expenses and allowances authorized by this paragraph shall not be received by members of the commission for more than four days annually.

(f) This part shall stand repealed on December 31, 2016. (Code 1981, § 20-14-90, enacted by Ga. L. 2006, p. 680, § 1/HB 1227; Ga. L. 2007, p. 47, § 20/SB 103; Ga. L. 2011, p. 261, § 5/HB 125.)

**The 2011 amendment**, effective July 1, 2011, substituted “at least once” for “not less than two nor more than four times” in the last sentence of paragraph (e)(1); and substituted “December 31, 2016” for “December 31, 2012” in subsection (f).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2006, Code Section 20-14-90, as enacted by Ga. L. 2006, p. 1008, § 1/HB 1228, was redesignated as Code Section 20-14-91.



## PART 9

## CAREER AND TECHNICAL EDUCATION ADVISORY COMMISSION

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2006, Part 8, as enacted by Ga. L. 2006, p. 1008, § 1/HB 1228, was redesignated as Part 9.

**20-14-91. (Repealed effective December 31, 2012) Career and Technical Education Advisory Commission created; membership; reporting and review requirements; meetings; reimbursement of members; repeal of provisions.**

(a) There is created the Career and Technical Education Advisory Commission.

(b)(1) The commission shall consist of three members of the House of Representatives to be appointed by the Speaker of the House, one of whom shall be from the House Committee on Economic Development and Tourism, one of whom shall be from the House Committee on Agriculture and Consumer Affairs, and one of whom shall be from the House Committee on Education; three members of the Senate to be appointed by the Senate Committee on Assignments, one of whom shall be from the Senate Economic Development Committee, one of whom shall be from the Senate Agriculture and Consumer Affairs Committee, and one of whom shall be from the Senate Education and Youth Committee; three members who are not members of the General Assembly to be appointed by the Governor; and three members who are not members of the General Assembly to be appointed by the State School Superintendent.

(2) Vacancies in the commission shall be filled in the same manner as the original appointments.

(3)(A) Legislative members of the commission shall serve two-year terms concurrent with their terms as members of the General Assembly.

(B) Nonlegislative members of the commission shall serve for two-year terms concurrent with those terms of legislative members of the commission.

(c) The Speaker of the House shall designate one of the commission members from the House of Representatives as a co-chairperson of the commission, and the Senate Committee on Assignments shall designate one of the commission members from the Senate as a co-chairperson of the commission. Each co-chairperson shall serve as such concurrent with his or her term as a member of the commission.

(d)(1) The head of the career and technical education program of the Department of Education shall report annually to the commission regarding the conditions, needs, issues, and problems of the program.

(2) The commission shall periodically review the conditions, needs, issues, and problems related to the career and technical education program, issue annually a report on the same to the General Assembly, and recommend any action or legislation which the commission deems necessary or appropriate.

(e)(1) The commission may conduct such meetings at such places and at such times as it may deem necessary or convenient to enable it to exercise fully and effectively its powers, perform its duties, and accomplish the objectives and purposes of this Code section. The commission shall meet upon the call of either co-chairperson. The commission shall meet not less than two nor more than four times annually.

(2) The legislative members of the commission shall receive the allowances provided for in Code Section 28-1-8. Any citizen members shall receive a daily expense allowance in the amount specified in subsection (b) of Code Section 45-7-21 as well as the mileage or transportation allowance authorized for state employees. Any members of the commission who are state officials, other than legislative members, and state employees shall receive no compensation for their services on the commission, but they shall be reimbursed for expenses incurred by them in the performance of their duties as members of the commission in the same manner as they are reimbursed for expenses in their capacities as state officials or employees. The funds necessary for the reimbursement of the expenses of state officials, other than legislative members, and state employees shall come from funds appropriated to or otherwise available to the Department of Education. All other funds necessary to carry out the provisions of this Code section shall come from funds appropriated to the House of Representatives and the Senate. The expenses and allowances authorized by this paragraph shall not be received by members of the commission for more than four days annually.

(f) This part shall stand repealed on December 31, 2012. (Code 1981, § 20-14-91, enacted by Ga. L. 2006, p. 1008, § 1/HB 1228; Ga. L. 2007, p. 47, § 20/SB 103.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2006, Code Section 20-14-90, as enacted by Ga. L. 2006, p. 1008, § 1/HB 1228, was redesignated as Code Section 20-14-91.

## CHAPTER 15

## GEORGIA MEDICAL CENTER AUTHORITY

- |            |   |            |  |
|------------|---|------------|--|
| Sec.       |   | Sec.       |  |
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| 20-15-2.   | Definitions; “self-liquidating” projects.   | 20-15-5.7. | Investment in bonds by public officers and public bodies.    |
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| 20-15-5.1. | Payment of revenue bonds; authorization and term of bonds; refunding of bonds; interest rates; debt limitation.   | 20-15-9.   | Legal services by Attorney General.                          |
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|            |   | 20-15-15.  | Georgia Medical Center Authority Overview Committee created. |
|            |   | 20-15-16.  | Scope of chapter.  |

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2000, Chapter 14 of this title, consisting of Code Sections 20-14-1 through 20-14-15, enacted by Ga. L. 2000, p. 399, § 1, was redesignated as Chapter 15 of this title, consisting of Code Sections 20-15-1 through 20-15-15.

**Law reviews.** — For article, “Contracting to Preserve Open Science: Consideration-Based Regulation in Patent Law,” see 58 Emory L.J. 889 (2009).

**20-15-1. Short title.**

This chapter shall be known and may be cited as the “Georgia Medical Center Authority Act.” (Code 1981, § 20-15-1, enacted by Ga. L. 2000, p. 399, § 1.)

**20-15-2. Definitions; “self-liquidating” projects.**

(a) As used in this chapter, the term:

(1) “Authority” means the Georgia Medical Center Authority.



(2) “Bonds” or “revenue bonds” means any bonds issued by the authority under this chapter, including refunding bonds.

(3) “Cost of the project” means the cost of construction; the cost of all lands, properties, rights, easements, and franchises acquired; the cost of all machinery and equipment; financing charges; interest prior to and during construction and for one year after completion of construction; the cost of engineering, architectural, and legal expenses and of plans and specifications and other expenses necessary or incident to determining the feasibility or practicability of the project; administrative expenses; the cost of intellectual property; and such other expenses as may be necessary or incident to the financing authorized in this chapter, the construction of any project, the placing of the same in operation, and the condemnation of property necessary for such construction and operation. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds issued under this chapter for such project.

(4) “Project” means and includes one or any combination of the following: life sciences industry research and development, manufacturing facilities, and programs based in the State of Georgia, to include office space, laboratories, treatment centers, and other related buildings, structures, equipment, as well as associated facilities such as parking facilities and common areas; and improvements of every kind and character deemed by the authority necessary or convenient for its purposes.

(b) Any project or combination of projects shall be deemed “self-liquidating” if, in the judgment of the authority, the revenues, rents, or earnings to be derived by the authority therefrom will be sufficient to pay the cost of maintaining, repairing, and operating the project and to pay the principal of and interest on revenue bonds which may be issued for the cost of such project, projects, or combination of projects. (Code 1981, § 20-15-2, enacted by Ga. L. 2000, p. 399, § 1; Ga. L. 2006, p. 1060, § 1/HB 1083.)

**20-15-3. Establishment; appointment of members; terms of office; vacancies; removal from office; compensation; authority’s existence; accountability of members.**

(a) There is created a body corporate and politic to be known as the Georgia Medical Center Authority which shall be deemed to be an instrumentality of the State of Georgia and a public corporation; and by that name, style, and title such body may contract and be contracted with, sue and be sued, implead and be impleaded, and complain and defend in all courts of this state.

(b) The authority shall consist of seven members as follows:

(1) Those persons appointed to the authority prior to July 1, 2005, and serving for terms to expire in June, 2006, shall continue to serve for the remainder of the terms to which they were appointed;

(2)(A) In 2005 and quadrennially thereafter, the Governor shall appoint two members.

(B) In 2006 and quadrennially thereafter, the Governor shall appoint three members;

(3) In 2005 and quadrennially thereafter, the Senate Committee on Assignments shall appoint one member; and

(4) In 2006 and quadrennially thereafter, the Speaker of the House of Representatives shall appoint one member.

Except as otherwise provided by paragraph (1) of this subsection, members shall serve for terms of office of four years each and until the appointment and qualification of their respective successors. Any elected or appointed state, county, municipal, or school board official or employee, except members of the board of regents and officials and employees of the legislative or judicial branches of state government, are authorized to be appointed as members of the authority, and any person so appointed is authorized to serve as a member of the authority.

(c) All successors shall be appointed in the same manner as original appointments. Members may be eligible for reappointment. Vacancies in office shall be filled in the same manner as original appointments. An appointment to fill a vacancy shall be for the unexpired term. The authority shall elect its own officers. A majority of the membership of the authority shall constitute a quorum. No action shall be taken by the authority except in the presence of a quorum and upon approval of a majority of those members present. No vacancy on the authority shall impair the right of the quorum to exercise all rights and perform all duties of the authority. The authority shall otherwise provide for its own organization and conduct of business according to *Robert's Rules of Order*.

(d) The Governor, after notice and opportunity for hearing, may remove from office any member of the authority for any of the following reasons:

(1) Inability or neglect to perform the duties required of members;

(2) Failure to attend, without prior approval of the chairperson of the authority, four consecutive regularly scheduled meetings of the authority;

(3) Incompetence; or

(4) Dishonest conduct.

(e) The members of the authority shall receive a daily expense allowance and reimbursement for transportation costs as provided for in Code Section 45-7-21; and the members of the authority shall not receive any other compensation for their services as such.

(f) The authority shall have perpetual existence. Any change in name or composition of the authority shall in no way affect the vested rights of any person under this chapter or impair the obligations of any contracts existing under this chapter.

(g) The members of the authority shall be accountable in all respects as trustees. The authority shall keep suitable and proper books and records of all receipts, income, and expenditures of every kind and shall submit for inspection all the books, together with the proper statement of the authority's financial position, to the state auditor.

(h) The authority is assigned to the Department of Economic Development for administrative purposes only. (Code 1981, § 20-15-3, enacted by Ga. L. 2000, p. 399, § 1; Ga. L. 2001, p. 4, § 20; Ga. L. 2004, p. 486, § 1; Ga. L. 2005, p. 1134, § 6/HB 298.)

**20-15-4. Purpose.**

The corporate purpose and the general nature of the business of the authority shall be:

(1) The provision of life sciences industry research and development and manufacturing facilities and programs based in the State of Georgia;

(2) The commercialization of biomedical and biotechnical research results;

(3) The promotion of closer ties between academic institutions of the state and the biomedical industry so as to capitalize on present and future state intellectual resources;

(4) The facilitation of the development of a life sciences industrial cluster in the State of Georgia; and

(5) The advancement of local and state economic growth.

Nothing in this chapter shall be construed to conflict with the powers and authority of the board of regents over its institutions. (Code 1981, § 20-15-4, enacted by Ga. L. 2000, p. 399, § 1; Ga. L. 2006, p. 1060, § 2/HB 1083; Ga. L. 2007, p. 47, § 20/SB 103.)



**20-15-5. Powers.**

The authority is authorized:

- (1) To have a seal and alter it at pleasure;
- (2) To acquire, by purchase, lease, or otherwise and to hold, lease, and dispose of real and personal property of every kind and character for its corporate purposes, including the acquisition of partial and joint ownership interests in real property with other entities;
- (3) To appoint, select, and employ officers, agents, and employees, including but not limited to engineering, architectural, and construction experts and fiscal agents; to contract for the services of individuals or organizations not employed full time by the authority who or which are engaged primarily in the rendition of personal services rather than the sale of goods or merchandise, such as, but not limited to, the services of accountants, engineers, architects, consultants, and advisors, and to allow suitable compensation for such services; and to make provisions with regard to its employees for group insurance, retirement, or other employee benefit arrangements, provided that no part-time or contract employees shall participate in group insurance or retirement benefits and to establish conditions of employment of authority employees;
- (4) To make contracts and to execute all instruments necessary or convenient, including but not limited to contracts for construction of projects or contracts with respect to the leasing or use of projects which the authority causes to be erected or acquired;
- (5) To plan, survey, subdivide, administer, construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage projects as defined in this chapter, such projects to be located on property owned or leased by the authority or the State of Georgia or under the control and management of the authority. The cost of any such project shall be paid from the authority's income or from such proceeds and any loan, gift, or grant from the United States of America or any agency or instrumentality thereof, or the State of Georgia or any county, municipal corporation, authority, or local government or governing body thereof;
- (6) To extend credit or make loans to any person, firm, corporation, limited liability company, or other type of entity for the planning, design, construction, acquisition, refinancing, or carrying out of any project, which credit or loans shall be secured by loan agreements, deeds to secure debt, security agreements, contracts, and all other instruments, fees, or charges, upon such terms and conditions as the authority shall determine reasonable in connection with such loans, including provision for the establishment and maintenance of re-

serves and insurance funds, and to require the inclusion in any contract, loan agreement, deed to secure debt, security agreement, or other instrument, of such provisions for guaranty, insurance, construction, use, operation, maintenance, and financing of a project as the authority may deem necessary or desirable;

(7) To acquire, accept, or retain equitable interests, security interests, or other interests in any property, real or personal, by deed to secure debt, assignment, security agreement, pledge, conveyance, contract, lien, loan agreement, or other consensual transfer, in order to secure the repayment of any moneys loaned or credit extended by the authority;

(8) To borrow money for any of its corporate purposes and to issue negotiable revenue bonds payable solely from funds pledged for that purpose and to provide for the payment of such bonds and for the rights of the holders thereof;

(9) To borrow money for any of its corporate purposes, on either an unsecured or secured basis, and to execute loan agreements, promissory notes, and other contracts and instruments in connection therewith and to provide for the repayment of such loans and for the rights of the lenders thereof;

(10) As security for repayment of its revenue bonds, loans, or notes, to pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property, real or personal, of such authority, to the extent of its interest therein, and to execute any trust agreement, indenture, or security agreement containing any provisions not in conflict with law, which trust agreement, indenture, or security agreement may provide for foreclosure or forced sale of any part of the authority upon default on such bonds, loans, or notes, either in payment of principal or interest in the performance of any term or condition as are contained in such agreement or indenture. The state waives any right which it may have to prevent the forced sale or foreclosure of any property of the authority so mortgaged or encumbered, to the extent of the interest of the authority therein but not any interest of the state therein, and any such mortgage or encumbrance may be foreclosed in accordance with law and the terms thereof;

(11) To procure or to provide insurance against any loss in connection with its programs, property, and other assets;

(12) To accept loans or grants, or both, of money, materials, or property of any kind from the United States of America or any agency or instrumentality thereof upon such terms and conditions as the United States of America or such agency or instrumentality may impose and to administer trusts;

(13) To exercise any power which is usually possessed by private corporations performing similar functions and which is not in conflict with the Constitution and laws of this state;

(14) To act as agent for the United States of America or any agency, department, corporation, or instrumentality thereof, in any manner within the purposes or powers of the authority;

(15) To adopt, alter, or repeal its own bylaws, rules, and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, as the authority may deem necessary or expedient in facilitating its business;

(16) To receive and accept loans, gifts, grants, donations, or contributions of property, facilities, or services, with or without consideration, from any person, firm, or corporation or from the State of Georgia, or any agency or instrumentality thereof, or from any county, municipal corporation, or local government or governing body;

(17) To hold, use, administer, and expend such sum or sums as may hereafter be received as income, as gifts, or as appropriations by authority of the General Assembly for any of the purposes of this authority;

(18) To do all things necessary or convenient to carry out the powers and purposes of the authority;

(19) To acquire, lease (as lessee), purchase, hold, own, and use any franchise or any property, real or personal, tangible or intangible, or any interest therein; and to sell, lease (as lessor), transfer, or dispose thereof whenever the same is no longer required for purposes of the authority, or exchange the same for other property or rights which are useful for the purposes of the authority;

(20) To fix, alter, charge, and collect fares, rates, rentals, and other charges for its facilities and for admission to its grounds at reasonable rates to be determined by the authority;

(21) To contract with the Georgia State Financing and Investment Commission for the construction of the project as provided for in Article 2 of Chapter 17 of Title 50; or to contract with other authorities, departments, or agencies of the State of Georgia; or to contract with private developers, architects, and engineers for the construction of the project;

(22) To invest and reinvest any or all idle funds or moneys, including, but not limited to, funds held in reserve or from contributions, gifts, or grants, which cannot be immediately used for the purpose for which received, such investment to be made in any



security or securities which are legal investments for executors or trustees; provided, however, that investments in such securities will at all times be held for and, when sold, used for the purposes for which the money was originally received;

(23) To create, acquire, alter, dissolve, operate, manage, and maintain subsidiaries for the sole purpose of facilitating the purposes and exercising the powers of the authority provided in this chapter, provided that such subsidiaries are operated on a not for profit basis;

(24) To create an investment or revolving loan fund utilizing money derived from the sale of bonds as seed funds for such loan fund to facilitate the purposes of the authority; and

(25) To invest and reinvest in any equity investments which are legal investments for executors or trustees; provided, however, that investments in such equity investments will at all times be held for and, when sold, used for the purposes for which the money was originally received; provided, further, that all such investments shall be managed by properly accredited third-party managers. (Code 1981, § 20-15-5, enacted by Ga. L. 2000, p. 399, § 1; Ga. L. 2006, p. 1060, § 3/HB 1083; Ga. L. 2009, p. 300, §§ 1, 2/HB 93.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2009, in paragraph (23), “that” was inserted and “not for profit” was substituted for “not-for-profit”, and, in paragraph (25), “; provided, further,” was substituted for “and provided further”.

#### **20-15-5.1. Payment of revenue bonds; authorization and term of bonds; refunding of bonds; interest rates; debt limitation.**

(a) Revenue bonds issued by the authority shall be paid solely from the property (including, but not limited to, real property, fixtures, personal property, revenues, or other funds) pledged, mortgaged, conveyed, assigned, hypothecated, or otherwise encumbered to secure or to pay such bonds. No revenue bonds shall be issued by the authority under this chapter unless its members adopt a resolution finding that the project or combination of projects for which such bonds are to be issued will be self-liquidating.

(b) All revenue bonds shall be authorized by resolution of the authority, adopted by a majority vote of the full membership of the authority at a regular or special meeting.

(c) Revenue bonds shall bear such date or dates, shall mature at such time or times (not more than 40 years from their respective dates), shall bear interest at such rate or rates (which may be fixed or may fluctuate or otherwise change from time to time), shall be subject to redemption on such terms, and shall contain such other terms, provisions, cove-

nants, assignments, and conditions as the resolution authorizing the issuance of such bonds may permit or provide. The terms, provisions, covenants, assignments, and conditions contained in or provided or permitted by any resolution of the authority authorizing the issuance of such revenue bonds shall bind the members of the authority then in office and their successors.

(d) The authority shall have power from time to time and whenever it deems it expedient to refund any bonds by the issuance of new bonds, whether or not the bonds to be refunded have matured, and may issue bonds partly to refund bonds then outstanding and partly for any other purpose permitted under this chapter. The refunding bonds may be exchanged for the bonds to be refunded, with such cash adjustments as may be agreed upon, or may sold and the proceeds applied to the purchase or redemption of the bonds to be refunded.

(e) Any limitations with respect to interest rates or any maximum interest rate or rates found in the usury laws of this state or any other laws of this state shall not apply to revenue bonds of the authority.

(f) The authority shall not have outstanding at any one time bonds and notes exceeding \$300 million; provided, however, that such limitations shall not apply with respect to bonds and notes issued to refund outstanding bonds and notes. (Code 1981, § 20-15-5.1, enacted by Ga. L. 2006, p. 1060, § 4/HB 1083.)

#### **20-15-5.2. Confirmation and validation of bonds; exchangeability and transferability; certificate of validation.**

(a) Bonds of the authority shall be confirmed and validated in accordance with the procedure of Article 3 of Chapter 82 of Title 36.

(b) Bonds issued by the authority may be in such form, either coupon or fully registered, or both coupon and fully registered, and may be subject to such exchangeability and transferability provisions as the bond resolution authorizing the issuance of such bonds or any indenture or trust agreement may provide.

(c) Bonds shall bear a certificate of validation. The signature of the clerk of the Superior Court of Richmond County may be made on the certificate of validation of such bonds by facsimile or by manual execution, stating the date on which such bonds were validated; and such entry shall be original evidence of the fact of judgment and shall be received as original evidence in any court in this state. (Code 1981, § 20-15-5.2, enacted by Ga. L. 2006, p. 1060, § 4/HB 1083.)

**20-15-5.3. Provisions of agreements or instruments; use of proceeds; issuance of subsequent bonds; renewal of validated bonds.**

(a) Subject to the limitations and procedures provided by this Code section and by Code Section 20-15-5.2, the agreements or instruments executed by the authority may contain such provisions not inconsistent with law as shall be determined by the members of the authority.

(b) The proceeds derived from the sale of all bonds issued by the authority shall be held and used for the ultimate purpose of paying, directly or indirectly as permitted in this chapter, all or part the cost of any project, or for the purpose of refunding any bonds or bond anticipation notes issued in accordance with this chapter.

(c) Issuance by the authority of one or more series of bonds or bond anticipation notes for one or more projects shall not preclude it from issuing other bonds in connection with the same project or with any other projects; but the proceeding wherein any subsequent bonds are issued shall recognize and protect any prior loan agreement, mortgage, deed to secure debt, trust deed, security agreement, or other agreement or instrument made for any prior issue of bonds, unless in the resolution authorizing such prior issue the right is expressly reserved to the authority to issue subsequent bonds on a parity with such prior issue.

(d) The authority shall have the power and is authorized, whenever bonds of the authority shall have been validated as provided in this chapter, to issue from time to time its notes in anticipation of such bonds as validated and to renew from time to time any such notes by the issuance of new notes, whether or not the notes to be renewed have matured. The authority may issue such bond anticipation notes only to provide funds which would otherwise be provided by the issuance of the bonds as validated. Such notes may be authorized, sold, executed, and delivered in the same manner as bonds. As with its bonds, the authority may sell such notes at public sale or at private sale. Any resolution or resolutions authorizing notes of the authority or any issue thereof may contain any provisions which the authority is authorized to include in any resolution or resolutions authorizing bonds of the authority of any issue thereof; and the authority may include in any notes any terms, covenants, or conditions which the authority is authorized to include in any bonds. Validation of such bonds shall be a condition precedent to the issuance of such notes, but it shall not be required that such notes be judicially validated. Bond anticipation notes shall not be issued in an amount exceeding the par value of the bonds in anticipation on which they are to be issued. (Code 1981, § 20-15-5.3, enacted by Ga. L. 2006, p. 1060, § 4/HB 1083; Ga. L. 2007, p. 47, § 20/SB 103.)



**20-15-5.4. Sale of bonds.**

The authority may sell its bonds in such manner and for such price as it may determine to be for the best interests of the authority. Whenever the authority shall determine to issue its bonds, it shall request the Georgia State Financing and Investment Commission to approve the bonds and carry out other services for the authority as provided by Article 2 of Chapter 17 of Title 50. (Code 1981, § 20-15-5.4, enacted by Ga. L. 2006, p. 1060, § 4/HB 1083.)

**20-15-5.5. Timing of issuance of revenue bonds.**

Revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things which are specified or required by this chapter. In the discretion of the authority, revenue bonds of a single issue may be issued for the purpose of paying the cost of any one or more, including combination of, projects at any one unit or any number of units. Any resolution providing for the issuance of revenue bonds under this chapter shall become effective immediately upon its passage and need not be published or posted. Any such resolution may be passed at any regular or special or adjourned meeting of the authority by a majority of its full membership. (Code 1981, § 20-15-5.5, enacted by Ga. L. 2006, p. 1060, § 4/HB 1083.)

**20-15-5.6. Bonds do not create a debt of the state.**

Revenue bonds issued under this chapter shall not be deemed to constitute a debt of the state or a pledge of the faith and credit of the state, but such bonds shall be payable solely from the property provided for in Code Section 20-15-5.1; and the issuance of such revenue bonds shall not directly, indirectly, or contingently obligate the state to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment; and all such bonds shall contain recitals on their face covering substantially the foregoing provisions of this Code section. (Code 1981, § 20-15-5.6, enacted by Ga. L. 2006, p. 1060, § 4/HB 1083.)

**20-15-5.7. Investment in bonds by public officers and public bodies.**

The bonds authorized in this chapter are made securities in which all public officers and public bodies of this state and all municipalities and all political subdivisions; all insurance companies and associations and other persons carrying on an insurance business; all banks, bankers, trust companies, savings banks, and savings associations, including

savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business; all administrators, guardians, executors, trustees, and other fiduciaries; and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state may properly and legally invest funds including capital in their control or belonging to them. The bonds are also made securities which may be deposited with and shall be received by all public officers and public bodies of this state and all municipalities and political subdivisions for any purpose for which the deposit of the bonds or other obligations of this state is authorized. (Code 1981, § 20-15-5.7, enacted by Ga. L. 2006, p. 1060, § 4/HB 1083.)

#### **20-15-6. Public purpose; tax exemptions.**

It is found, determined, and declared that the creation of the authority and the carrying out of its corporate purposes are in all respects for the benefit of the people of this state and constitute a public purpose and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter. The State of Georgia covenants with the holders of the bonds that the authority shall be required to pay no taxes or assessments upon any of the property acquired or leased by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation or maintenance of the facilities erected, maintained, or acquired by it or any fees, rentals, or other charges for the use of such facilities or other income received by the authority, and that the bonds of the authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state; provided, however, in no event shall the exemptions granted in this Code section extend to any lessee or other private person or entity. The exemption from taxation provided for in this Code section shall include exemptions from sales and use taxes on property purchased by the authority. (Code 1981, § 20-15-6, enacted by Ga. L. 2000, p. 399, § 1; Ga. L. 2006, p. 1060, § 5/HB 1083.)

#### **20-15-7. Trust funds.**

All moneys received pursuant to the authority of this chapter, whether as proceeds from the sale of revenue bonds, as grants or other contributions, or as revenues, rents, and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this chapter. (Code 1981, § 20-15-7, enacted by Ga. L. 2000, p. 399, § 1; Ga. L. 2006, p. 1060, § 6/HB 1083.)

**20-15-8. Authorization to fix rentals and other charges.**

The authority is authorized to fix rentals and other charges which any user shall pay to the authority for the use of the project or part thereof or combination thereof, and to charge and collect the same, and to lease and make contracts with political subdivisions and agencies with respect to use of any part of the project. The rentals and other charges shall be so fixed and adjusted in respect to the aggregate thereof from the project or any part thereof so as to provide a fund sufficient with other revenues of such project, if any, to pay the cost of maintaining, repairing, and operating the project, including the reserves for extraordinary repairs and insurance, unless such cost shall be otherwise provided for, which cost shall be deemed to include the expenses incurred by the authority on account of the project for water, light, sewer, and other services furnished by other facilities at the project. (Code 1981, § 20-15-8, enacted by Ga. L. 2000, p. 399, § 1.)

**20-15-9. Legal services by Attorney General.**

The Attorney General shall provide legal services for the authority and in connection therewith the provisions of Code Sections 45-15-13 through 45-15-16 shall be fully applicable. (Code 1981, § 20-15-9, enacted by Ga. L. 2000, p. 399, § 1.)

**20-15-10. Actions; venue; jurisdiction.**

Any action to protect or enforce any rights under this chapter shall be brought in the Superior Court of Richmond County, Georgia; and such court shall have exclusive, original jurisdiction of such actions. Furthermore, the venue for actions brought against the authority shall be in the Superior Court of Richmond County, Georgia; and such court shall have exclusive, original jurisdiction of such actions. Nothing contained in this chapter shall be construed to impair any rights afforded the state under the Constitution of the United States. (Code 1981, § 20-15-10, enacted by Ga. L. 2000, p. 399, § 1.)

**20-15-11. Disclosure; conduct of members.**

(a) Every member of the authority and every employee of the authority who knowingly has any interest, direct or indirect, in any contract to which the authority is or is about to become a party, or in any other business of the authority, or in any firm or corporation doing business with the authority shall make full disclosure of such interest to the authority. Failure to disclose such an interest shall constitute cause for which a member of the authority may be removed or an employee discharged or otherwise disciplined at the discretion of the authority.



(b) The provisions of Article 1 of Chapter 10 of Title 16 and Code Sections 16-10-21, 16-10-22, 16-10-92, and 16-10-93, regulating the conduct of officers, employees, and agents of political subdivisions, municipal and other public corporations, and other public organizations, shall be applicable to the conduct of members, officers, employees, and agents of the authority.

(c) Any contract or transaction of the authority involving a conflict of interest which is not disclosed under subsection (a) of this Code section, or involving a violation of Article 1 of Chapter 10 of Title 16 or Code Section 16-10-21, 16-10-22, 16-10-92, or 16-10-93, or involving a violation of any other provision of law regulating conflicts of interest which is applicable to the authority or its members, officers, or employees shall be voidable by the authority. (Code 1981, § 20-15-11, enacted by Ga. L. 2000, p. 399, § 1.)

#### **20-15-12. Immunity and exemption from liability.**

The authority shall have the same immunity and exemption from liability for torts and negligence as enjoyed by this state; and the officers, agents, and employees of the authority, when in the performance of the work of the authority, shall have the same immunity and exemption from liability for torts and negligence as the officers, agents, and employees of this state as when in the performance of their public duties or work of the state. (Code 1981, § 20-15-12, enacted by Ga. L. 2000, p. 399, § 1.)

#### **20-15-13. Immunity from antitrust liability.**

It is declared by the General Assembly that, in the exercise of the power specifically granted to it by this chapter, the authority is acting pursuant to state policy and shall be immune from antitrust liability to the same degree and extent as enjoyed by this state. (Code 1981, § 20-15-13, enacted by Ga. L. 2000, p. 399, § 1.)

#### **20-15-14. Annual budget; work plan; audits.**

(a) The authority shall develop an annual budget and a financial and program work plan for both capital and operational requirements of the authority's activities and projects for each fiscal year.

(b) The authority shall employ a firm of independent certified public accountants licensed to practice in this state as auditors to prepare an annual audit of the books, records, and accounts of the authority. (Code 1981, § 20-15-14, enacted by Ga. L. 2000, p. 399, § 1.)

**20-15-15. Georgia Medical Center Authority Overview Committee created.**

(a) There is created as a joint committee of the General Assembly the Georgia Medical Center Authority Overview Committee to be composed of three members of the House of Representatives appointed by the Speaker of the House and three members of the Senate appointed by the President of the Senate. The members of the committee shall serve two-year terms concurrent with their terms as members of the General Assembly. The chairperson of the committee shall be appointed by the President of the Senate from the membership of the committee, and the vice chairperson of the committee shall be appointed by the Speaker of the House from the membership of the committee. The chairperson and vice chairperson shall serve terms of two years concurrent with their terms as members of the General Assembly. Vacancies in an appointed member's position or in the offices of chairperson or vice chairperson of the committee shall be filled for the unexpired term in the same manner as the original appointment. The committee shall periodically inquire into and review the operations of the Georgia Medical Center Authority, as well as periodically review and evaluate the success with which the authority is accomplishing its statutory duties and functions as provided in this chapter.

(b) The state auditor, the state accounting officer, the Attorney General, and all other agencies of state government, upon request by the committee, shall assist the committee in the discharge of its duties set forth in this chapter. The committee may employ not more than two staff members and may secure the services of independent accountants, engineers, and consultants.

(c) The Georgia Medical Center Authority shall cooperate with the committee, its authorized personnel, the Attorney General, the state auditor, the state accounting officer, and other state agencies in order that the charges of the committee, set forth in this chapter, may be timely and efficiently discharged. The authority shall submit to the committee such reports and data as the committee shall reasonably require of the authority in order that the committee may adequately perform its functions. The Attorney General is authorized to bring appropriate legal actions to enforce any laws specifically or generally relating to the Georgia Medical Center Authority. The committee shall, on or before the first day of January of each year, and at such other times as it deems necessary, submit to the General Assembly a report of its findings and recommendations based upon the review of the Georgia Medical Center Authority, as set forth in this chapter.

(d) In the discharge of its duties, the committee shall evaluate the performance of the Georgia Medical Center Authority consistent with the following criteria:

- (1) Prudent, legal, and accountable expenditure of public funds;
- (2) Efficient operation; and
- (3) Performance of its statutory responsibilities.

(e) The committee is authorized to expend state funds available to the committee for the discharge of its duties. Said funds may be used for the purposes of compensating staff personnel, paying for services of independent accountants, engineers, and consultants, and paying all other necessary expenses incurred by the committee in performing its duties.

(f) The members of the committee shall receive the same compensation, per diem, expenses, and allowances for their service on the committee as is authorized by law for members of interim legislative study committees.

(g) The funds necessary for the purposes of the committee shall come from the funds appropriated to and available to the legislative branch of government. (Code 1981, § 20-15-15, enacted by Ga. L. 2000, p. 399, § 1; Ga. L. 2005, p. 694, § 29/HB 293.)

#### **20-15-16. Scope of chapter.**

This chapter shall be deemed to provide an additional and alternative method for the doing of things authorized by this chapter, shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing. (Code 1981, § 20-15-16, enacted by Ga. L. 2006, p. 1060, § 7/HB 1083.)



## CHAPTER 16

### GEORGIA HIGHER EDUCATION FACILITIES AUTHORITY

| Sec.     |   | Sec.      |   |
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| 20-16-9. | Timing of issuance of revenue bonds.  | 20-16-18. | Creation of Georgia Higher Education Facilities Authority Committee.          |

#### 20-16-1. Short title.

This chapter shall be known and may be cited as the "Georgia Higher Education Facilities Authority Act." (Code 1981, § 20-16-1, enacted by Ga. L. 2006, p. 783, § 1/SB 562.)

#### 20-16-2. Definitions; "self-liquidating" projects.

(a) As used in this chapter, the term:

(1) "Authority" means the Georgia Higher Education Facilities Authority.

(2) "Board of regents" means the Board of Regents of the University System of Georgia.

(3) Reserved.

(4) "Bonds" or "revenue bonds" means any bonds issued by the authority under this chapter, including refunding bonds.

(5) "Construction" means construction, renovation, improvement, rehabilitation, or restoration.

(6) "Cost of the project" means the cost of construction; the cost of all lands, real properties, personal properties, fixtures, rights, ease-

ments, and franchises acquired; the cost of all machinery and equipment; financing charges; interest prior to and during construction and for one year after completion of construction; cost of engineering; architectural, and legal expenses; cost of plans and specifications and other expenses necessary or incident to determining the feasibility or practicability of the project; administrative expense; and such other expenses as may be necessary or incident to the financing authorized in this chapter, the construction of any project, or the placing of it in operation and the condemnation of property necessary for such construction and operation. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds issued under this chapter for such project.

(7) “Project” means facilities of every kind, type, and character deemed by the authority necessary or convenient for the efficient operation of any unit.

(8) “Unit” means any institution, school, academy, university, or experiment station at any particular location which forms a part of the university system or is under the control of the State Board of the Technical College System of Georgia.

(9) “University system” means the University System of Georgia.

(b) Any project or combination of projects shall be deemed “self-liquidating” if, in the judgment of the authority, the revenues, rents, or earnings to be derived by the authority therefrom will be sufficient to pay the cost of maintaining, repairing, and operating the project and to pay the principal of and interest on revenue bonds which may be issued for the cost of such project, projects, or combination of projects. (Code 1981, § 20-16-2, enacted by Ga. L. 2006, p. 783, § 1/SB 562; Ga. L. 2011, p. 632, § 2/HB 49; Ga. L. 2012, p. 775, § 20/HB 942.)

**The 2011 amendment**, effective July 1, 2011, substituted “Reserved.” for the former provisions of paragraph (a)(3), which read: “‘Board of technical and adult education’ means the State Board of Technical and Adult Education.”

**The 2012 amendment**, effective May 1, 2012, part of an Act to revise, modern-

ize, and correct the Code, revised punctuation in subsection (b).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2011, “State Board of the Technical College System of Georgia” was substituted for “board of technical and adult education” in paragraph (a)(8).

**20-16-3. Georgia Higher Education Facilities Authority created; appointment of members; terms of office; officers.**

(a) There is created a body corporate and politic to be known as the Georgia Higher Education Facilities Authority, which shall be deemed to be an instrumentality of this state and a public corporation; and by

that name, style, and title such body may contract and be contracted with, bring and defend actions, and implead and be impleaded. The authority shall consist of five members, as follows: three appointees of the Governor, one appointee of the Speaker of the House of Representatives who is a member of the State Board of the Technical College System of Georgia, and one appointee of the President Pro Tempore of the Senate who is a member of the board of regents. The initial term of office of the Governor's appointees shall end on June 30, 2007. The initial term of office of the Speaker of the House of Representatives' appointee shall end on June 30, 2008. The initial term of office of the President Pro Tempore of the Senate's appointee shall end on June 30, 2009. After the expiration of these initial terms of office, the terms of office of all succeeding members shall be for three years. If, at the end of any term of office of any member, a successor thereto has not been appointed, the member whose term of office has expired shall continue to hold office until his or her successor is so appointed.

(b) The authority shall elect one of its members as chairperson and another as vice chairperson and a secretary and treasurer, who need not necessarily be a member of the authority. The majority of the members of the authority shall constitute a quorum. No vacancy on the authority shall impair the right of the quorum to exercise all the rights and perform all the duties of the authority, except as otherwise provided in this chapter. The members of the authority shall be entitled to and shall be reimbursed for their reasonable travel and expenses necessarily incurred in the performance of their duties and shall receive the same per diem as do members of the General Assembly. The authority may hire staff or may have staff assigned from within the university system or from the Technical College System of Georgia for the purposes of carrying out the duties and responsibilities contained in this chapter, with compensation paid from resources available to the authority or the board of regents or the State Board of the Technical College System of Georgia, as such boards and the authority may agree. The authority shall make bylaws for its own government. It shall have perpetual existence. Any change in name or composition of the authority shall in no way affect the vested rights of any person under the provisions of this chapter or impair the obligations of any contracts existing under this chapter.

(c) The authority is assigned to the Georgia State Financing and Investment Commission for administrative purposes only as prescribed in Code Section 50-4-3.

(d) No member of the authority shall transact any business, as such term is defined in Code Section 45-10-20, with the state, the University System of Georgia or any of its institutions, or the Technical College System of Georgia or any of its institutions. (Code 1981, § 20-16-3,



enacted by Ga. L. 2006, p. 783, § 1/SB 562; Ga. L. 2007, p. 47, § 20/SB 103; Ga. L. 2008, p. 335, § 2/SB 435; Ga. L. 2011, p. 632, § 3/HB 49.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “board of technical and adult education” in the second sentence of subsection (a) and in the fifth sentence of subsection (b).

**20-16-4. Powers.**

The authority shall have power:

- (1) To have a seal and alter it at pleasure;
- (2) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real and personal property of every kind and character for its corporate purposes;
- (3) To acquire in its own name by purchase, on such terms and conditions, and in such manner as it may deem proper, real property or estates for years, usufructs, or rights of easements therein or franchises necessary or convenient for its corporate purposes and to use them so long as its corporate existence shall continue and to lease or make contracts with respect to the use of or dispose of them in any manner it deems to the best advantage of the authority; and if the authority shall deem it expedient to construct or finance any project on lands which are a part of the campus, grounds, or other real estate holdings of a unit, the Governor and the board of regents, as may be applicable, are authorized to execute for and on behalf of the state a lease for the term of the financing, such lease to terminate when the bonds for the project are retired, upon such lands to the authority or to an entity borrowing funds from the authority for such parcel or parcels as shall be needed for a period not to exceed 50 years, provided that such lands shall remain subject to the police power jurisdiction of the board of regents or the State Board of the Technical College System of Georgia, as may be applicable;
- (4) To appoint an executive director who shall be the executive officer and administrative head of the authority. The executive director shall be appointed by and shall serve at the pleasure of the members of the authority. The executive director shall hire officers, agents, and employees, prescribe their duties and qualifications and fix their compensation, and perform such other duties as may be prescribed by the members of this authority. Such officers, agents, and employees shall serve at the pleasure of the executive director;
- (5) To make and execute contracts, leases, rental agreements, and other instruments necessary or convenient to exercise the powers of the authority, including contracts for construction of projects and leases of projects or contracts with respect to the use or operation of projects which the authority causes to be erected or acquired;

(6) To construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage projects to be located on property owned by or leased by the authority;

(7) To extend credit or make loans to any person, firm, corporation, limited liability company, or other type of entity for the planning, design, construction, acquisition, refinancing, or carrying out of any project, which credit or loans shall be secured by loan agreements, deeds to secure debt, security agreements, contracts, and all other instruments, fees, or charges, upon such terms and conditions as the authority shall determine reasonable in connection with such loans, including provision for the establishment and maintenance of reserves and insurance funds, and to require the inclusion in any contract, loan agreement, deed to secure debt, security agreement, or other instrument, of such provisions for guaranty, insurance, construction, use, operation, maintenance, and financing of a project as the authority may deem necessary or desirable;

(8) To acquire, accept, or retain equitable interests, security interests, or other interests in any property, real or personal, by deed to secure debt, assignment, security agreement, pledge, conveyance, contract, lien, loan agreement, or other consensual transfer, with any such instrument terminating when the bonds for the project are retired, in order to secure the repayment of any moneys loaned or credit extended by the authority;

(9) To accept loans or grants of money or materials or property of any kind from the United States or any agency or instrumentality thereof upon such terms and conditions as the United States or such agency or instrumentality may impose;

(10) To borrow money for any of its corporate purposes and to issue negotiable revenue bonds payable solely from funds pledged for that purpose and to provide for the payment of such bonds and for the rights of the holders thereof;

(11) To borrow money for any of its corporate purposes, on either an unsecured or secured basis, and to execute loan agreements, promissory notes, and other contracts and instruments in connection therewith and to provide for the repayment of such loans and for the rights of the lenders thereof;

(12) As security for repayment of its revenue bonds, loans, or notes, to pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property, real or personal, of such authority, to the extent of its interest therein, and to execute any trust agreement, indenture, or security agreement containing any provisions not in conflict with law, which trust agreement, indenture, or security agreement may provide for foreclosure or forced sale of any property

of the authority upon default on such bonds, loans, or notes, either in payment of principal or interest or in the performance of any term or condition as are contained in such agreement or indenture. The state waives any right which it may have to prevent the forced sale or foreclosure of any property of the authority so mortgaged or encumbered, to the extent of the interest of the authority therein but not any interest of the state therein, and any such mortgage or encumbrance may be foreclosed in accordance with law and the terms thereof;

(13) To procure or to provide insurance against any loss in connection with its programs, property, and other assets;

(14) To receive and administer gifts, grants, and devises of money and property of any kind from any source and to administer trusts;

(15) To exercise any power usually possessed by private corporations performing similar functions which is not in conflict with the Constitution and laws of this state; and

(16) To do all things necessary or convenient to carry out the powers expressly given in this chapter. (Code 1981, § 20-16-4, enacted by Ga. L. 2006, p. 783, § 1/SB 562; Ga. L. 2007, p. 47, § 20/SB 103; Ga. L. 2011, p. 632, § 3/HB 49.)

**The 2011 amendment**, effective July 1, 2011, substituted “State Board of the Technical College System of Georgia” for “board of technical and adult education” near the end of paragraph (3).

#### **20-16-5. Revenue bonds.**

(a) Revenue bonds issued by the authority shall be paid solely from the property (including, but not limited to, real property, fixtures, personal property, revenues, or other funds) pledged, mortgaged, conveyed, assigned, hypothecated, or otherwise encumbered to secure or to pay such bonds. No revenue bonds shall be issued by the authority under this chapter unless its members adopt a resolution finding that the project or combination of projects for which such bonds are to be issued will be self-liquidating.

(b) All revenue bonds shall be authorized by resolution of the authority, adopted by a majority vote of the full membership of the authority at a regular or special meeting.

(c) Revenue bonds shall bear such date or dates, shall mature at such time or times (not more than 40 years from their respective dates), shall bear interest at such rate or rates (which may be fixed or may fluctuate or otherwise change from time to time), shall be subject to redemption on such terms, and shall contain such other terms, provisions, covenants, assignments, and conditions as the resolution authorizing the



issuance of such bonds may permit or provide. The terms, provisions, covenants, assignments, and conditions contained in or provided or permitted by any resolution of the authority authorizing the issuance of such revenue bonds shall bind the members of the authority then in office and their successors.

(d) The authority shall have power from time to time and whenever it deems it expedient to refund any bonds by the issuance of new bonds, whether or not the bonds to be refunded have matured, and may issue bonds partly to refund bonds then outstanding and partly for any other purpose permitted under this chapter. The refunding bonds may be exchanged for the bonds to be refunded, with such cash adjustments as may be agreed upon, or may be sold and the proceeds applied to the purchase or redemption of the bonds to be refunded.

(e) Any limitations with respect to interest rates or any maximum interest rate or rates found in the usury laws of this state or any other laws of this state shall not apply to revenue bonds of the authority.

(f) The authority shall not have outstanding at any one time bonds and notes exceeding \$500 million. (Code 1981, § 20-16-5, enacted by Ga. L. 2006, p. 783, § 1/SB 562; Ga. L. 2012, p. 1073, § 1/SB 302.)

**The 2012 amendment**, effective May 2, 2012, substituted “\$500 million” for “\$300 million” in subsection (f).

to Code Section 28-9-5, in 2006, a comma was inserted following “mortgaged” in the first sentence of subsection (a).

**Code Commission notes.** — Pursuant

## **20-16-6. Confirmation and validation of bonds; exchangeability and transferability; certificate of validation.**

(a) Bonds of the authority shall be confirmed and validated in accordance with the procedure of Article 3 of Chapter 82 of Title 36.

(b) Bonds issued by the authority may be in such form, either coupon or fully registered, or both coupon and fully registered, and may be subject to such exchangeability and transferability provisions, as the bond resolution authorizing the issuance of such bonds or any indenture or trust agreement may provide.

(c) Bonds shall bear a certificate of validation. The signature of the clerk of the Superior Court of Fulton County may be made on the certificate of validation of such bonds by facsimile or by manual execution, stating the date on which such bonds were validated; and such entry shall be original evidence of the fact of judgment and shall be received as original evidence in any court in this state. (Code 1981, § 20-16-6, enacted by Ga. L. 2006, p. 783, § 1/SB 562.)

**20-16-7. Provisions of agreements or instruments; use of bond proceeds; subsequent bond issues; issuance of bond anticipation notes.**

(a) Subject to the limitations and procedures provided by this Code section and by Code Section 20-16-6, the agreements or instruments executed by the authority may contain such provisions not inconsistent with law as shall be determined by the members of the authority.

(b) The proceeds derived from the sale of all bonds issued by the authority shall be held and used for the ultimate purpose of paying, directly or indirectly as permitted in this chapter, all or part of the cost of any project, or for the purpose of refunding any bonds or bond anticipation notes issued in accordance with this chapter.

(c) Issuance by the authority of one or more series of bonds or bond anticipation notes for one or more projects shall not preclude it from issuing other bonds in connection with the same project or with any other projects; but the proceeding wherein any subsequent bonds are issued shall recognize and protect any prior loan agreement, mortgage, deed to secure debt, trust deed, security agreement, or other agreement or instrument made for any prior issue of bonds, unless in the resolution authorizing such prior issue the right is expressly reserved to the authority to issue subsequent bonds on a parity with such prior issue.

(d) The authority shall have the power and is authorized, whenever bonds of the authority shall have been validated as provided in this chapter, to issue from time to time its notes in anticipation of such bonds as validated and to renew from time to time any such notes by the issuance of new notes, whether or not the notes to be renewed have matured. The authority may issue such bond anticipation notes only to provide funds which would otherwise be provided by the issuance of the bonds as validated. Such notes may be authorized, sold, executed, and delivered in the same manner as bonds. As with its bonds, the authority may sell such notes at public sale or at private sale. Any resolution or resolutions authorizing notes of the authority or any issue thereof may contain any provisions which the authority is authorized to include in any resolution or resolutions authorizing bonds of the authority or any issue thereof; and the authority may include in any notes any terms, covenants, or conditions which the authority is authorized to include in any bonds. Validation of such bonds shall be a condition precedent to the issuance of such notes, but it shall not be required that such notes be judicially validated. Bond anticipation notes shall not be issued in an amount exceeding the par value of the bonds in anticipation of which they are to be issued. (Code 1981, § 20-16-7, enacted by Ga. L. 2006, p. 783, § 1/SB 562.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2006, “authority or any issue thereof” was substituted for “authority of any issue thereof” in the fifth sentence of subsection (d).

#### **20-16-8. Sale of bonds.**

The authority may sell its bonds in such manner and for such price as it may determine to be for the best interests of the authority. Whenever the authority shall determine to issue its bonds, it shall request the Georgia State Financing and Investment Commission to approve the bonds and carry out other services for the authority as provided by Article 2 of Chapter 17 of Title 50. (Code 1981, § 20-16-8, enacted by Ga. L. 2006, p. 783, § 1/SB 562.)

#### **20-16-9. Timing of issuance of revenue bonds.**

Revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things which are specified or required by this chapter. In the discretion of the authority, revenue bonds of a single issue may be issued for the purpose of paying the cost of any one or more, including a combination of, projects at any one unit or any number of units. Any resolution providing for the issuance of revenue bonds under this chapter shall become effective immediately upon its passage and need not be published or posted. Any such resolution may be passed at any regular or special or adjourned meeting of the authority by a majority of its full membership. (Code 1981, § 20-16-9, enacted by Ga. L. 2006, p. 783, § 1/SB 562.)

#### **20-16-10. Bonds do not create a debt of the state; recitals on face of bonds.**

Revenue bonds issued under this chapter shall not be deemed to constitute a debt of the state or a pledge of the faith and credit of the state, but such bonds shall be payable solely from the property provided for in Code Section 20-16-5; and the issuance of such revenue bonds shall not directly, indirectly, or contingently obligate the state to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment; and all such bonds shall contain recitals on their face covering substantially the foregoing provisions of this Code section. (Code 1981, § 20-16-10, enacted by Ga. L. 2006, p. 783, § 1/SB 562.)

#### **20-16-11. Investment in bonds by public officers and public bodies.**

The bonds authorized in this chapter are made securities in which all public officers and public bodies of this state and all municipalities and



all political subdivisions; all insurance companies and associations and other persons carrying on an insurance business; all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business; all administrators, guardians, executors, trustees, and other fiduciaries; and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state may properly and legally invest funds including capital in their control or belonging to them. The bonds are also made securities which may be deposited with and shall be received by all public officers and public bodies of this state and all municipalities and political subdivisions for any purpose for which the deposit of the bonds or other obligations of this state is authorized. (Code 1981, § 20-16-11, enacted by Ga. L. 2006, p. 783, § 1/SB 562.)

**20-16-12. Bonds and income therefrom exempt from taxation.**

The creation of the authority and the carrying out of its corporate purpose is in all respects for the benefit of the people of this state and is a public purpose, and the authority will be performing an essential governmental function in the exercise of the power conferred upon it by this chapter; and this state covenants with the holders of the bonds that the authority shall be required to pay no taxes or assessments upon any of the property acquired or leased by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation or maintenance of the buildings erected or acquired by it or any fees, rentals, or other charges for the use of such buildings or other income received by the authority, and that the bonds of the authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state. (Code 1981, § 20-16-12, enacted by Ga. L. 2006, p. 783, § 1/SB 562.)

**20-16-13. Attorney General to provide legal services for the authority; accountability.**

(a) The Attorney General shall provide legal services for the authority and in connection therewith the provisions of Code Sections 45-15-13 through 45-15-16 shall be fully applicable.

(b) The members of the authority shall be accountable in all respects as trustees. The authority shall keep suitable books and records of all actions and transactions and shall submit such books together with a statement of the authority's financial position to an independent auditing firm selected by the authority on or about the close of the state's fiscal year for the purpose of obtaining an audit of the authority's

finances. (Code 1981, § 20-16-13, enacted by Ga. L. 2006, p. 783, § 1/SB 562.)

#### **20-16-14. Jurisdiction.**

Any action to protect or enforce any rights under this chapter shall be brought in the Superior Court of Fulton County; and any action pertaining to validation of any bonds issued under this chapter shall likewise be brought in such court, which shall have exclusive, original jurisdiction of such actions. (Code 1981, § 20-16-14, enacted by Ga. L. 2006, p. 783, § 1/SB 562.)

#### **20-16-15. Funds received pursuant to this chapter to be held in trust.**

All moneys received pursuant to the authority of this chapter, whether as proceeds from the sale of revenue bonds, as grants or other contributions, or as revenues, rents, and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this chapter. (Code 1981, § 20-16-15, enacted by Ga. L. 2006, p. 783, § 1/SB 562.)

#### **20-16-16. Additional and alternative method.**

This chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized by this chapter, shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing. (Code 1981, § 20-16-16, enacted by Ga. L. 2006, p. 783, § 1/SB 562.)

#### **20-16-17. Liberal construction of chapter.**

This chapter, being for the welfare of the state and its inhabitants, shall be liberally construed to effect its purposes. (Code 1981, § 20-16-17, enacted by Ga. L. 2006, p. 783, § 1/SB 562.)

#### **20-16-18. Creation of Georgia Higher Education Facilities Authority Committee.**

(a) There is created as a joint committee of the General Assembly the Georgia Higher Education Facilities Authority Committee to be composed of five members of the House of Representatives appointed by the Speaker of the House, two of whom shall be members of the minority party, five members of the Senate appointed by the Senate Committee on Assignments, two of whom shall be members of the minority party, the chairperson of the House Committee on Higher Education or his or

her designee, and the chairperson of the Senate Higher Education Committee or his or her designee. The members of the committee shall serve two-year terms concurrent with their terms as members of the General Assembly. The Senate Committee on Assignments shall appoint a cochairperson from the Senate members of the committee, and the Speaker of the House shall appoint a cochairperson from the House of Representatives members of the committee. The cochairpersons shall serve terms of two years concurrent with their terms as members of the General Assembly. Vacancies in an appointed member's position or in the offices of cochairperson of the committee shall be filled for the unexpired term in the same manner as the original appointment. The committee shall periodically inquire into and review the operations of the Georgia Higher Education Facilities Authority, as well as periodically review and evaluate the success with which the authority is accomplishing its statutory duties and functions as provided in this chapter.

(b) The state auditor, the Attorney General, and all other agencies of state government, upon request by the committee, shall assist the committee in the discharge of its duties set forth in this Code section. The committee may employ not more than two staff members and may secure the services of independent accountants, engineers, and consultants.

(c) The Georgia Higher Education Facilities Authority shall cooperate with the committee, its authorized personnel, the Attorney General, the state auditor, the state accounting officer, and other state agencies in order that the charges of the committee, set forth in this Code section, may be timely and efficiently discharged. The authority shall submit to the committee such reports and data as the committee shall reasonably require of the authority in order that the committee may adequately perform its functions. The Attorney General is authorized to bring appropriate legal actions to enforce any laws specifically or generally relating to the Georgia Higher Education Facilities Authority. The committee shall, on or before the first day of January of each year, and at such other times as it deems necessary, submit to the General Assembly a report of its findings and recommendations based upon the review of the Georgia Higher Education Facilities Authority, as set forth in this chapter.

(d) In the discharge of its duties, the committee shall evaluate the performance of the Georgia Higher Education Facilities Authority consistent with the following criteria:

- (1) Prudent, legal, and accountable expenditure of public funds;
- (2) Efficient operation; and
- (3) Performance of its statutory responsibilities.



(e)(1) The committee is authorized to expend state funds available to the committee for the discharge of its duties. Such funds may be used for the purposes of compensating staff personnel; paying for services of independent accountants, engineers, and consultants; and paying all other necessary expenses incurred by the committee in performing its duties.

(2) The members of the committee shall receive the same compensation, per diem, expenses, and allowances for their service on the committee as is authorized by law for members of interim legislative study committees.

(3) The funds necessary for the purposes of the committee shall come from the funds appropriated to and available to the legislative branch of government. (Code 1981, § 20-16-18, enacted by Ga. L. 2006, p. 783, § 1/SB 562.)

CHAPTER 17

INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

|                       |                                 |
|-----------------------|---------------------------------|
| Sec.                  | Sec.                            |
| 20-17-1. Short title. | 20-17-2. Provisions of Compact. |

**Effective date.** — This chapter became effective July 1, 2012.

**Editor’s notes.** — Ga. L. 2012, p. 377, § 1/SB 227, provides this chapter becomes effective only upon legislative enactment of this compact into law by no less than ten of the states. As of July 1, 2012, 42 states have enacted this compact into law.

20-17-1. Short title.

This chapter shall be known and may be cited as the “Interstate Compact on Educational Opportunity for Military Children.” (Code 1981, § 20-17-1, enacted by Ga. L. 2012, p. 377, § 1/SB 227.)

20-17-2. Provisions of Compact.

“The Interstate Compact on Educational Opportunity for Military Children” is enacted into law and entered into by the State of Georgia with any and all states legally joining therein in the form substantially as follows:

“Interstate Compact on Educational Opportunity for Military Children

The Contracting States solemnly agree that:

ARTICLE I  
PURPOSE

It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

- A. Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district or variations in entrance or age requirements;
- B. Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content, or assessment;

C. Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities;

D. Facilitating the on-time graduation of children of military families;

E. Providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact;

F. Providing for the uniform collection and sharing of information between and among member states, schools, and military families under this compact;

G. Promoting coordination between this compact and other compacts affecting military children; and

H. Promoting flexibility and cooperation between the educational system, parents, and the student in order to achieve educational success for the student.

## ARTICLE II DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

A. 'Active duty' means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Sections 1209 and 1211.

B. 'Children of military families' means school-aged children in the household of an active duty member enrolled in kindergarten through grade 12.

C. 'Compact commissioner' means the voting representative of each compacting state appointed pursuant to Article VIII of this compact.

D. 'Deployment' means the period one month prior to the service members' departure from their home station on military orders though six months after return to their home station.

E. 'Educational records' means those official records, files, and data directly related to a student and maintained by the school or local education agency, including, but not limited to, records encompassing all the material kept in the student's cumulative folder, such as general identifying data; records of attendance and of academic work completed; records of achievement and results of evaluative tests; health data; disciplinary status; test protocols; and individualized education programs.



F. 'Extracurricular activities' means a voluntary activity sponsored by the school or local education agency or an organization sanctioned by the local education agency. Extracurricular activities include, but are not limited to, preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

G. 'Interstate Commission on Educational Opportunity for Military Children' or 'Interstate Commission' means the commission that is created under Article IX of this compact.

H. 'Local education agency' means a public authority legally constituted by the state as an administrative agency to provide control of and direction for kindergarten through grade 12 public educational institutions.

I. 'Member state' means a state that has enacted this compact.

J. 'Military installation' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the United States Department of Defense, including any leased facility, which is located within any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other United States Territory. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

K. 'Nonmember state' means a state that has not enacted this compact.

L. 'Receiving state' means the state to which a child of a military family is sent, brought, or caused to be sent or brought.

M. 'Rule' means a written statement by the Interstate Commission promulgated pursuant to Article XII of this compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the Interstate Commission, and includes the amendment, repeal, or suspension of an existing rule.

N. 'Sending state' means the state from which a child of a military family is sent, brought, or caused to be sent or brought.

O. 'State' means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other United States Territory.

P. 'Student' means the child of a military family for whom the local education agency receives public funding and who is formally enrolled in kindergarten through grade 12.

Q. 'Transition' means the formal and physical process of transferring from school to school or the period of time in which a student moves from one school in the sending state to another school in the receiving state.

R. 'Uniformed service' means the Army, Navy, Air Force, Marine Corps, or Coast Guard as well as the Commissioned Corps of the National Oceanic and Atmospheric Administration and Public Health Services.

S. 'Veteran' means a person who served in the uniformed services and who was discharged or released therefrom under conditions other than dishonorable.

### ARTICLE III APPLICABILITY

A. Except as otherwise provided in Section B of this article, this compact shall apply to the children of:

(1) Active duty members of the uniformed services as defined in this compact, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Sections 1209 and 1211;

(2) Members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one year after medical discharge or retirement; and

(3) Members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one year after death.

B. The provisions of this interstate compact shall only apply to local education agencies as defined in this compact.

C. The provisions of this compact shall not apply to the children of:

(1) Inactive members of the national guard and military reserves;

(2) Members of the uniformed services now retired, except as provided in Section A of this article;

(3) Veterans of the uniformed services, except as provided in Section A of this article; and

(4) Other United States Department of Defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

#### ARTICLE IV EDUCATIONAL RECORDS & ENROLLMENT

**A. Unofficial or 'hand-carried' education records** — In the event that official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the Interstate Commission. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.

**B. Official education records and transcripts** — Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official education record from the school in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the official education records to the school in the receiving state within ten days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

**C. Immunizations** — Compacting states shall give 30 days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the Interstate Commission for students to obtain any immunization required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within 30 days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

**D. Kindergarten and first grade entrance age** — Students shall be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level, including kindergarten, from a local education agency in the sending state at the time of transition, regardless of age. A student who has satisfactorily completed the prerequisite grade level in the local education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving state, regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on their validated level from an accredited school in the sending state.

#### ARTICLE V PLACEMENT & ATTENDANCE

**A. Course placement** — When the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the stu-



dent's enrollment in the sending state school or educational assessments conducted at the school in the sending state if the courses are offered. Course placement includes, but is not limited to, honors, international baccalaureate, advanced placement, vocational, technical, and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the course.

**B. Educational program placement** — The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation or placement in like programs in the sending state. Such programs include, but are not limited to, gifted and talented programs and English as a second language. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

**C. Special education services.**

(1) In compliance with the federal requirements of the Individuals with Disabilities Education Act, 20 U.S.C.A. Section 1400 et seq, the receiving state shall initially provide comparable services to a student with a disability based on his or her current Individualized Education Program.

(2) In compliance with the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C.A. Section 794, and with Title II of the Americans with Disabilities Act, 42 U.S.C.A. Sections 12131-12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or Title II Plan, to provide the student with equal access to education. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

**D. Placement flexibility** — Local education agency administrative officials shall have flexibility in waiving course or program prerequisites or other preconditions for placement in courses or programs offered under the jurisdiction of the local education agency.

**E. Absence as related to deployment activities** — A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by the compact, and has been called to duty for, is on leave from, or immediately returned from deployment

to a combat zone or combat support posting shall be granted additional excused absences at the discretion of the local education agency superintendent to visit with his or her parent or legal guardian relative to such leave or deployment of the parent or guardian.

ARTICLE VI

ELIGIBILITY

A. Eligibility for enrollment.

(1) Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law, shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

(2) A local education agency shall be prohibited from charging local tuition to a transitioning military child placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent.

(3) A transitioning military child placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent may continue to attend the school in which he or she was enrolled while residing with the custodial parent.

**B. Eligibility for extracurricular participation** — State and local education agencies shall facilitate the opportunity for transitioning military children’s inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified.

ARTICLE VII

GRADUATION

In order to facilitate the on-time graduation of children of military families, states and local education agencies shall incorporate the following procedures:

**A. Waiver requirements** — Local education agency administrative officials shall waive specific courses required for graduation if similar course work has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the local education agency shall provide an alternative means of acquiring required coursework so that graduation may occur on time.

**B. Exit exams** — States shall accept exit or end-of-course exams required for graduation from the sending state, national

norm-referenced achievement tests, or alternative testing in lieu of testing requirements for graduation in the receiving state. In the event the above alternatives cannot be accommodated by the receiving state for a student transferring in his or her senior year, then the provisions of Section C of this article shall apply.

**C. Transfers during Senior year** — Should a military student transferring at the beginning or during his or her senior year be ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall ensure the receipt of a diploma from the sending local education agency if the student meets the graduation requirements of the sending local education agency. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with Sections A and B of this article.

## ARTICLE VIII STATE COORDINATION

A. Each member state shall, through the creation of a state council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies, and military installations concerning the state's participation in, and compliance with, this compact and Interstate Commission activities. While each member state may determine the membership of its own state council, its membership must include at least the state superintendent of education, a superintendent of a school district with a high concentration of military children, a representative from a military installation, one representative from the executive branch of government, and other offices and stakeholder groups the state council deems appropriate. A member state that does not have a school district deemed to contain a high concentration of military children may appoint a superintendent from another school district to represent local education agencies on the state council.

B. The state council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

C. The compact commissioner responsible for the administration and management of the state's participation in the compact shall be appointed by the Governor or as otherwise determined by each member state.

D. The compact commissioner and the military family education liaison designated herein shall be ex-officio members of the state council, unless either is already a full voting member of the state council.



ARTICLE IX  
INTERSTATE COMMISSION ON EDUCATIONAL  
OPPORTUNITY FOR MILITARY CHILDREN

The member states hereby create the 'Interstate Commission on Educational Opportunity for Military Children.' The activities of the Interstate Commission are the formation of public policy and are a discretionary state function. The Interstate Commission shall:

(1) Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth herein and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact;

(2) Consist of one Interstate Commission voting representative from each member state who shall be that state's compact commissioner and:

A. Each member state represented at a meeting of the Interstate Commission is entitled to one vote;

B. A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission;

C. A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the Interstate Commission, the Governor or state council may delegate voting authority to another person from their state for a specified meeting; and

D. The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication;

(3) Consist of ex-officio, nonvoting representatives who are members of interested organizations. Such ex-officio members, as defined in the bylaws, may include, but not be limited to, members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the United States Department of Defense, the Education Commission of the States, the Interstate Agreement on the Qualification of Educational Personnel, and other interstate compacts affecting the education of children of military members;

(4) Meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings;

(5) Establish an executive committee, whose members shall include the officers of the Interstate Commission and such other

members of the Interstate Commission as determined by the bylaws. Members of the executive committee shall serve a one-year term. Members of the executive committee shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact, including enforcement and compliance with the provisions of the compact and its bylaws and rules, and other such duties as deemed necessary. The United States Department of Defense, shall serve as an ex-officio, nonvoting member of the executive committee;

(6) Establish bylaws and rules that provide for conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests;

(7) Give public notice of all meetings, and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:

A. Relate solely to the Interstate Commission's internal personnel practices and procedures;

B. Disclose matters specifically exempted from disclosure by federal and state statute;

C. Disclose trade secrets or commercial or financial information which is privileged or confidential;

D. Involve accusing a person of a crime, or formally censuring a person;

E. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

F. Disclose investigative records compiled for law enforcement purposes; or

G. Specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding;

(8) For a meeting, or portion of a meeting, closed pursuant to this provision, the Interstate Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each

relevant exemptible provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed and the record of a roll-call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Interstate Commission;

(9) Collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements. Such methods of data collection, exchange, and reporting shall, in so far as is reasonably possible, conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules; and

(10) Create a process that permits military officials, education officials, and parents to inform the Interstate Commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This section shall not be construed to create a private right of action against the Interstate Commission or any member state.

## ARTICLE X

### POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The Interstate Commission shall have the following powers:

- (1) To provide for dispute resolution among member states;
- (2) To promulgate rules and take all necessary actions to effect the goals, purposes, and obligations as enumerated in this compact. The rules shall be binding in the compact states to the extent and in the manner provided in this compact;
- (3) To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules, and actions;
- (4) To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process;
- (5) To establish and maintain offices which shall be located within one or more of the member states;
- (6) To purchase and maintain insurance and bonds;



- (7) To borrow, accept, hire, or contract for services of personnel;
- (8) To establish and appoint committees; including, but not limited to, an executive committee as required by Article IX, Section (5) of this compact which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder;
- (9) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;
- (10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it;
- (11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed;
- (12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
- (13) To establish a budget and make expenditures;
- (14) To adopt a seal and bylaws governing the management and operation of the Interstate Commission;
- (15) To report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission;
- (16) To coordinate education, training, and public awareness regarding the compact, its implementation, and operation for officials and parents involved in such activity;
- (17) To establish uniform standards for the reporting, collecting, and exchanging of data;
- (18) To maintain corporate books and records in accordance with the bylaws;
- (19) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact; and
- (20) To provide for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

ARTICLE XI  
ORGANIZATION AND OPERATION OF THE INTERSTATE  
COMMISSION

A. The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

- (1) Establishing the fiscal year of the Interstate Commission;
- (2) Establishing an executive committee, and such other committees as may be necessary;
- (3) Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission;
- (4) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;
- (5) Establishing the titles and responsibilities of the officers and staff of the Interstate Commission;
- (6) Providing a mechanism for concluding the operations of the Interstate Commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations; and
- (7) Providing 'start up' rules for initial administration of the compact.

B. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice chairperson shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided, however, that subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the Interstate Commission.

C. Executive Committee, Officers, and Personnel.

- (1) The executive committee shall have such authority and duties as may be set forth in the bylaws, including, but not limited to:

(i) Managing the affairs of the Interstate Commission in a manner consistent with the bylaws and purposes of the Interstate Commission;

(ii) Overseeing an organizational structure within, and appropriate procedures for, the Interstate Commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and

(iii) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the Interstate Commission.

(2) The executive committee may, subject to the approval of the Interstate Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a member of the Interstate Commission. The executive director shall hire and supervise such other persons as may be authorized by the Interstate Commission.

D. The Interstate Commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities; provided, however, that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(1) The liability of the Interstate Commission's executive director and employees or Interstate Commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state, may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(2) The Interstate Commission shall defend the executive director and its employees and, subject to the approval of the Attorney



General or other appropriate legal counsel of the member state represented by an Interstate Commission representative, shall defend such Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(3) To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

## ARTICLE XII

### RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

**A. Rulemaking Authority** — The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact; provided however, that in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted hereunder, then such an action by the Interstate Commission shall be invalid and have no force or effect.

**B. Rulemaking Procedure** — Rules shall be made pursuant to a rulemaking process that substantially conforms to the 'Model State Administrative Procedure Act,' of 1981 Act, Uniform Laws Annotated, Vol. 15, p. 1 (2000) as amended, as may be appropriate to the operations of the Interstate Commission.

**C.** Not later than 30 days after a rule is promulgated, any person may file a petition for judicial review of the rule, provided that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable

law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the Interstate Commission's authority.

D. If a majority of the legislatures of the compacting states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

### ARTICLE XIII

## OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

### A. Oversight.

(1) The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact shall have standing as statutory law.

(2) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the Interstate Commission.

(3) The Interstate Commission shall be entitled to receive all service of process in any such proceeding and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the Interstate Commission shall render a judgment or order void as to the Interstate Commission, this compact, or promulgated rules.

**B. Default, Technical Assistance, Suspension, and Termination** — If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the Interstate Commission shall:

(1) Provide written notice to the defaulting state and other member states of the nature of the default, the means of curing the default, and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default;

(2) Provide remedial training and specific technical assistance regarding the default;

(3) If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states, and all rights, privileges, and benefits conferred by this compact shall be terminated from the

effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default;

(4) Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Interstate Commission to the Governor, the majority and minority leaders of the defaulting state’s legislature, and each of the member states;

(5) The state which has been suspended or terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of suspension or termination, including obligations, the performance of which extends beyond the effective date of suspension or termination;

(6) The Interstate Commission shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state; and

(7) The defaulting state may appeal the action of the Interstate Commission by petitioning the United States District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney’s fees.

**C. Dispute Resolution.**

(1) The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and nonmember states.

(2) The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

**D. Enforcement.**

(1) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(2) The Interstate Commission may, by majority vote of the members, initiate legal action in the United State District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its principal offices, to enforce compliance with the



provisions of the compact, its promulgated rules, and bylaws against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

(3) The remedies herein shall not be the exclusive remedies of the Interstate Commission. The Interstate Commission may avail itself of any other remedies available under state law or the regulation of a profession.

#### ARTICLE XIV FINANCING OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

B. The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, which shall promulgate a rule binding upon all member states.

C. The Interstate Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the member states.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

#### ARTICLE XV MEMBER STATES, EFFECTIVE DATE, AND AMENDMENT

A. Any state is eligible to become a member state.

B. This compact shall become effective and binding upon legislative enactment of this compact into law by no less than ten of the states. The effective date shall be no earlier than December 1, 2011. Thereafter, it shall become effective and binding as to any other

member state upon enactment of the compact into law by that state. The Governors of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states.

C. The Interstate Commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the Interstate Commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

## ARTICLE XVI WITHDRAWAL AND DISSOLUTION

### A. Withdrawal.

(1) Once effective, the compact shall continue in force and remain binding upon each and every member state, provided that a member state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

(2) Withdrawal from this compact shall be by the enactment of a statute repealing the same.

(3) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other member states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

### B. Dissolution of Compact.

(1) This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one member state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

**ARTICLE XVII**  
**SEVERABILITY AND CONSTRUCTION**

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

C. Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

**ARTICLE XVIII**  
**BINDING EFFECT OF COMPACT AND OTHER LAWS**

**A. Other Laws.**

(1) Nothing herein shall prevent the enforcement of any other law of a member state that is not inconsistent with this compact.

(2) All member states' laws conflicting with this compact are superseded to the extent of the conflict.

**B. Binding Effect of the Compact.**

(1) All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

(2) All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

(3) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state." (Code 1981, § 20-17-2, enacted by Ga. L. 2012, p. 377, § 1/SB 227.)



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